

**Security Council**

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**Letter dated 11 May 2009 from the Chairman of the
Security Council Committee established pursuant to
resolution 1267 (1999) concerning Al-Qaida and the Taliban
and associated individuals and entities addressed to the
President of the Security Council**

I have the honour to transmit herewith the ninth report of the Analytical Support and Sanctions Monitoring Team established pursuant to Security Council resolution 1526 (2004) and extended by resolution 1822 (2008).

The report was submitted to the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities on 28 February 2009, in accordance with Security Council resolution 1822 (2008), and is currently being considered by the Committee.

I should be grateful if the attached report could be brought to the attention of the members of the Security Council and issued as a document of the Council.

(Signed) Thomas **Mayr-Harting**

Chairman

Security Council Committee established pursuant to
resolution 1267 (1999) concerning Al-Qaida and the
Taliban and associated individuals and entities



Letter dated 28 February 2009 from the Coordinator of the Analytical Support and Sanctions Monitoring Team addressed to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

The Analytical Support and Sanctions Monitoring Team, established pursuant to Security Council resolution 1526 (2004) and extended by Security Council resolution 1822 (2008), concerning Al-Qaida and the Taliban and associated individuals and entities, has the honour to transmit herewith its ninth report, in accordance with resolution 1822 (2008).

(Signed) Richard **Barrett**
Coordinator

Ninth report of the Analytical Support and Sanctions Monitoring Team, submitted pursuant to resolution 1822 (2008) concerning Al-Qaida and the Taliban and associated individuals and entities

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I. Summary

1. There have been important developments in the Security Council sanctions regime directed against Al-Qaida and the Taliban since the Monitoring Team submitted its last report on 31 March 2008.¹ In June that year, the Security Council adopted resolution 1822 (2008) which added significantly to the fairness and transparency of the procedures followed by the Security Council Committee established pursuant to resolution 1267 (1999) to oversee the Al-Qaida/Taliban sanctions regime (hereinafter referred to as "the Committee"). These improvements will not satisfy all critics, nor perhaps national and regional courts that have increasingly asserted their authority in matters of Member State implementation of the sanctions measures; they do, however, indicate the determination of the Security Council to strengthen the regime and to ensure that it retains its position as the pre-eminent expression of international resolve to act against the threat from Al-Qaida and the Taliban.

2. That threat continues, with the focus firmly on South Asia. The authorities on both sides of the Afghanistan/Pakistan border face an increasing challenge that defies a purely military solution; it is, however, the various Taliban groups that will determine the future there, not Al-Qaida. Meanwhile, the Security Council and the Committee will need to ensure that the sanctions regime has as great an impact as possible by inhibiting the capabilities of both the Taliban and Al-Qaida worldwide. This will require further work on the Consolidated List² and effective application of the new procedures introduced by Council resolution 1822 (2008), as well as more committed implementation and greater engagement by Member States. These issues are all interrelated.

3. In the present report, the Team attempts to point to action that is necessary on all four fronts. It believes that the widespread attention paid to the regime over the last two years and the changes that have resulted offer a real opportunity for a fairer, more dynamic and better directed regime with real impact and increased support.

II. The threat

A. Overview

4. When the Team last reported, in March 2008,³ the critical importance of the border area between Afghanistan and Pakistan in terms of the threat from the Taliban, Al-Qaida⁴ and other associated groups that feature on the Consolidated List was already apparent. Since then it has become even more so. Although there are threats elsewhere, there is no other area of the world where the success of counter-

¹ The Team's eighth report (S/2008/324): see www.un.org/sc/committees/1267/monitoringteam.shtml.

² The List established pursuant to resolutions 1267 (1999) and 1333 (2000) with respect to Al-Qaida, Usama bin Laden and the Taliban, and other individuals, groups, undertakings and entities associated with them; available at www.un.org/sc/committees/1267/consolist.shtml.

³ S/2008/324.

⁴ The first mention of a listed or previously listed individual or entity includes the relevant permanent reference number on the List; thereafter listed parties are indicated by *. Other names mentioned are not listed. As Al-Qaida, Usama bin Laden and the Taliban are named in the Security Council resolutions, they are mentioned without reference.

terrorism measures will mean more, and their failure have greater consequences, than in South Asia.

B. Al-Qaida leadership

5. Pressure inside and outside South Asia, including several direct attacks on the Al-Qaida leadership, may have led to a sombre celebration in August 2008 of the twentieth anniversary of the movement's foundation, but survival is itself a form of victory. Although geographically restricted to the Afghanistan/Pakistan border area and weakened by its failure to mount the attacks that it has threatened, Al-Qaida has continued to attract worldwide attention and new recruits.⁵

6. Propaganda has remained the most visible expression of Al-Qaida's global activity, though the loss of key Internet-based outlets on 10 September 2008, when Al-Hesbah, Al-Ekhlaas, Al-Firdaws, and Al-Boraq all went offline, shows some vulnerability to counter-measures.⁶ While the quantity and quality of its own online production have remained high, coverage in the mainstream media has declined as Al-Qaida has found it harder to claim relevance to the main issues of the Muslim world. The Israeli military offensive in Gaza in December 2008 and January 2009 prompted many comments from Al-Qaida leaders,⁷ but without attracting much attention until Usama bin Laden himself issued his first statement since May 2008 calling for attacks against Israeli and United States of America targets wherever accessible.⁸ Al-Qaida has struggled to play a credible role in the Palestinian issue, but popular criticism of the reaction of some Arab States to the Israeli attack may now offer more opportunity. Al-Qaida will also be looking to take advantage of any weakening of Hamas within the Palestinian territories.⁹

7. Al-Qaida continues to suffer from criticism of its arguments in support of terrorism from authoritative voices within the radical milieu. Perhaps as a result, or to reflect a shift in its support base, Al-Qaida leaders have begun to broaden their appeal to include individuals who feel economic or social deprivation rather than just those who may fear that their community is under threat.¹⁰ While a move towards more traditional terrorist mantras is unlikely to lead to greater support for Al-Qaida, as it undermines an essential element of its appeal to an individual's sense of duty towards God rather than towards himself, Al-Qaida messaging is increasingly adept at interweaving local, national and regional issues within its global vision.

⁵ For example, the British Prime Minister on a visit to Pakistan in December 2008 said that "three-quarters of the most serious terrorist plots investigated by the British authorities have links to Al-Qaida in Pakistan", see www.number10.gov.uk/Page17782.

⁶ All but Al-Ekhlaas were functioning again as of 28 February 2009, as were many others.

⁷ Al-Zawahiri (QE A 6.01) issued statements on 6 January and 13 February 2009; Abdelmalek Droukdel (QI.D.232.07) on 30 December 2008 and 13 January 2009; and Abu Yahia al Libi on 31 January 2009.

⁸ Audiotape issued on 14 January 2009.

⁹ Al-Qaida has often criticized Hamas, which in turn has tried to suppress any Al-Qaida activity in Gaza.

¹⁰ For example, Al-Zawahiri* in April, September, November 2008 and February 2009 statements; Droukdel* in a November 2008 statement.

C. Al-Qaida affiliates

8. The most notable attack since the Team's last report occurred in Mumbai in November 2008, apparently carried out by Lashkar-e-Tayyiba (QE.L.118.05). While Lashkar-e-Tayyiba* is associated with Al-Qaida, its focus is almost exclusively on India, and although the attackers sought out Western targets, it is unlikely that the group will begin to attack non-Indian targets outside the region. Al-Qaida has applauded the Mumbai attack and perhaps hoped that it might lead to some respite from the pressure exerted by the Pakistani Army on Al-Qaida bases in the Federally Administered Tribal Areas, but the Team has seen no evidence to suggest that the atrocity was coordinated between the two groups. Nonetheless, the worldwide coverage and the regional tension that resulted from the assault demonstrated once again the potential for terrorism to cause an impact far beyond the immediate area of attack.

9. Other high profile attacks in South Asia included the June 2008 bombing of the Embassy of Denmark in Islamabad, the July attack on the Embassy of India in Kabul and the September attack on the Marriott Hotel in Islamabad, and there were many more. In addition there have been reports of people from outside the region travelling to South Asia to participate in terrorist operations or to train for them elsewhere.¹¹ Beyond Afghanistan, Pakistan and India, the Team has noted attacks and arrests in 38 other States claimed by or attributed to listed groups associated with Al-Qaida.¹²

10. Al-Qaida in Iraq (QE.L.115.04) has continued to drift towards marginalization as the flow of recruits from outside the country has dried up and its support base in Iraq has eroded. There have been reports of fighters leaving for destinations in South Asia, the Arabian Peninsula, the Levant, North Africa, Somalia and the Sudan, with a few also reported in Europe.¹³ It is likely that these fighters will continue to seek operational opportunities, but they have had limited impact so far. In the Arabian Peninsula, Al-Qaida has been hit hard by counter-terrorist efforts in Saudi Arabia, which have led to the capture or death of some members and have driven others abroad.¹⁴ Some of the latter have gone to neighbouring Yemen, which is of increasing importance as the main area of activity for Al-Qaida supporters in the region.¹⁵ Yemen's proximity to Somalia may also help build an Al-Qaida presence in East Africa as Al-Shabaab, which shares Al-Qaida's ideals, gains further strength. Al-Shabaab, while not formally part of Al-Qaida, uses much of the same rhetoric

¹¹ For example, the Islamic Jihad Union, listed as Islamic Jihad Group (QE.L.119.05), based in Central and South Asia, has made recruits in Europe. Three of them were listed by the Committee during the reporting period.

¹² The Team has recorded open source reports of around 80 attacks affecting 25 States that involved listed entities, excluding the Taliban, and arrests in 16 others. See annex II to the present report.

¹³ Intelligence briefings to the Team in the areas concerned.

¹⁴ On 2 February 2009, the Interior Ministry of Saudi Arabia published a list of 83 Saudi nationals suspected of terrorism who were currently located outside the Kingdom, available at www.moi.gov.sa.

¹⁵ The seventh issue of *Echo of the Epics* (19 January 2009), Al-Qaida in the Arabian Peninsula's electronic magazine, announced that the Saudi Arabian branch would join the Yemeni branch under the overall leadership of Abu Baseer al-Wahayshi in Yemen.

and issues its communiqués through the Global Islamic Media Front, which is used exclusively by Al-Qaida supporters.¹⁶

11. Al-Qaida in the Arabian Peninsula also claims close links with the Organization of Al-Qaida in the Islamic Maghreb (QE.T.14.01),¹⁷ which has continued to mount attacks in Algeria as well as in Mali and Mauritania; but it has been less successful in the northern Maghreb, and in Algeria itself is restricted to the east of the country where it is under severe pressure from the authorities. Reports of new links with associates in Europe are as yet hard to assess and the focus of the group still appears to be local. The Libyan Islamic Fighting Group (QE.L.11.01), which was welcomed as part of Al-Qaida by Aiman al-Zawahiri (QI.A.6.01) in November 2007, has not yet shown any marked capability to mount attacks in the Libyan Arab Jamahiriya or in Western Europe where many of its members reside.

12. In South-East Asia, the execution of Imam Samudra (QI.S.121.03), Amrozi Nurhasyim and Huda bin Abdul Haq (also known as Mukhlis) (QI.B.112.03) on 9 November 2008 for their part in the Bali bombings of October 2002 did not spark the mass protests feared by the authorities, which may suggest that the influence of Jemaah Islamiyah (QE.J.92.02) has declined, at least for the moment. It is unlikely that the decline will be permanent. The Committee added the Rajah Solaiman Movement (QE.R.128.08) and seven of its members to its List in June 2008, but it was the Abu Sayyaf Group (QE.A.1.01) that was responsible for most of the attacks in South-East Asia during this period, including the kidnapping of three representatives of the International Committee of the Red Cross in January 2009.

D. The Taliban

13. The Executive Director of the United Nations Office on Drugs and Crime (UNODC), commenting on his Afghanistan opium survey of November 2008,¹⁸ estimated that the insurgency had received between \$250 million and \$470 million from opium cultivation in 2008. Fuelled by these revenues, the Afghan Taliban has gained ground, helped by the inability of the authorities in Kabul to provide the security and good governance that the great majority of Afghans crave. The attack on Kandahar prison in June 2008, which freed some 900 inmates, almost half of them Taliban fighters, demonstrated an ability to plan and mount a sophisticated operation at a relatively low level of command, and a further major attack in Kabul in February 2009 illustrated the difficulty of defending all possible targets even in the capital. However, although the headline figures for insurgent attacks in Afghanistan show a rise in violence since the Team's last report,¹⁹ not everything has gone the Taliban's way. They have not yet managed to take and hold major population centres; several commanders have been killed, and there are signs of exhaustion among others, as well as personal and tribal rivalries. While Taliban leaders have fiercely denied rumours of peace talks, the fact that they have needed

¹⁶ See also sect. VII.D. below.

¹⁷ *Echo of the Epics* (19 January 2006).

¹⁸ See www.unodc.org/documents/crop-monitoring/Afghanistan_Opium_Survey_2008.pdf.

¹⁹ Overall, security incidents in 2008 were 31 per cent higher than in 2007, with an average of 857 incidents per month in the second half of the year against 625 per month in the first half (source: United Nations Assistance Mission in Afghanistan (UNAMA)). See also www.unama-afg.org/docs/_UN-Docs/_human%20rights/2009/UNAMA_09february-Annual%20Report_PoC%202008_FINAL_11Feb09.pdf.

to do so suggests that some in the movement might be tempted to join such talks, were there a reliable mechanism to do so.

14. Despite these problems, the Afghan Taliban is in no danger of defeat and will likely continue to dominate the countryside while the Government controls the towns, with fighting continuing in both areas. While the overall number of foreign fighters captured, wounded or killed in 2008 is close to the overall figure for 2007,²⁰ there is little firm evidence of a major influx from outside the immediate region. The link between the Afghan Taliban and Al-Qaida continues to weaken, whether because the Taliban see that their association with Al-Qaida has brought them little benefit or because Al-Qaida sees its future on the Pakistani side of the border. Jalaluddin Haqqani (TI.H.40.01) and his son, Sirajuddin (TI.H.144.07), who are based on the border and have links with both the Taliban and Al-Qaida, remain responsible for many of the largest attacks in and around Kabul and are a vital target for the security forces in both Afghanistan and Pakistan.

15. The term "Pakistan Taliban" loosely describes an amalgam of several different groups, none of which is listed. These groups have no structural affiliation with the Afghan Taliban, but the Team notes a close alliance between some leaders of the Pakistan Taliban and individuals on both the Al-Qaida and the Taliban sections of the List. While they have not developed unified plans or objectives, the Taliban groups in Pakistan continue to test the limits of their power. The outcome of their struggle with the authorities in Pakistan, which has now extended well beyond the Federally Administered Tribal Areas, is crucial to the future of Al-Qaida, whose presence in the border area relies on their support. The Team has not been able to verify reports of the Pakistan Taliban planning attacks outside the country, but if the link with Al-Qaida becomes stronger, it is possible that a new energy may infuse the global threat from terrorism.

III. Implementation of the sanctions

A. Overview

16. Despite universal recognition of the importance of the sanctions regime, several factors have undermined its effective implementation: some States lack the capacity to introduce and enforce the measures; some regard its targets as of marginal national relevance; some grant it a low priority because they believe it ineffective, and some have questioned its legitimacy. The Security Council has tried to deal with these issues by encouraging capacity-building, explaining the relevance of the regime to global security, adapting the measures, and encouraging Member States to come forward with ideas for improvement. The Council has also addressed Member State concerns about the fairness of its procedures.

²⁰ 149 captured, 24 wounded, 108 killed for 2007, and 90 captured, 15 wounded and 184 killed for 2008 (source: UNAMA).

17. The significant innovations introduced in this regard by resolution 1822 (2008),²¹ and before it by resolutions 1617 (2005), 1730 (2006) and 1735 (2006), came too late, however, to prevent challenges to the regime in the courts.²² These challenges have not brought into question the authority of the Security Council to impose the sanctions regime, but they have led national and regional courts to play a key role in Member State implementation. The courts have asserted their authority to examine the legality of actions taken by States to put the relevant Security Council resolutions into effect. They have decided that the consequences of listing require that individuals and entities placed on the List must have certain protections of their rights, in particular, their right to know the case against them, the right to be heard and the right to challenge the decision before an independent body.

18. It is conceivable that further decisions by regional and national courts in favour of listed individuals and entities based on a review of the case against them could cause real difficulties for Member State implementation of the sanctions measures, but the Team believes that at this stage, when combined with the focal point process and the review of listings established by resolution 1822 (2008), the involvement of national and regional courts can help the Committee to strengthen the regime as an effective response to the threat from Al-Qaida and the Taliban, without undermining the authority of the Council.

B. Legal challenges to the regime at the regional and Member State levels

19. A long-awaited decision by the Court of Justice of the European Communities in September 2008 in the joined case of Yassin Abdullah Ezzedine Qadi (QI.Q.22.01) and Barakaat International Foundation (QE.B.39.01) is arguably the most significant legal development to affect the regime since its inception.²³ The Court of Justice held that the procedures used by the European Union to implement the sanctions²⁴ had infringed the basic rights of Qadi* and Barakaat,* namely their right to be heard and their right to effective judicial protection, by failing to communicate the evidence justifying the restrictive measures imposed upon them and thus precluding their right to defend themselves against them.

²¹ Resolution 1822 (2008) introduced stronger review mechanisms for listing (paras. 22, 25 and 26), enhanced notification procedures (paras. 15, 17 and 23) and required publicly releasable statements of case and narrative summaries of reasons for listing (paras. 12 and 13). It also directed the Committee to keep its guidelines under active review in support of the objective of ensuring that fair and clear procedures exist for listing and de-listing, as well as for granting humanitarian exemptions (para. 28).

²² See annex I to the present report.

²³ Judgment of the Court (Grand Chamber) of 3 September 2008 in joined cases C-402/05P and C-415/05P, Yassin Abdullah Kadi, Al Barakaat International Foundation v. Council of the European Union, Commission of the European Communities, United Kingdom of Great Britain and Northern Ireland; available at <http://curia.europa.eu>.

²⁴ See regulation (EC) No. 881/2002 of 27 May 2002.

20. The Court of Justice recognized the authority of the Security Council to impose sanctions on individuals and entities associated with Al-Qaida and the Taliban,²⁵ but it ruled that the Council of the European Union could not impose the measures without communicating substantive reasons justifying its implementation of the decision of the Committee to the parties concerned. The Court annulled the European Union regulation implementing the measures insofar as it applied to Qadi* and Barakaat,* but allowed three months for the Council of the European Union to remedy the infringements found.²⁶ The Presidency of the Council then approached the Committee which provided narrative summaries of reasons for listing,²⁷ which the European Union Commission made available to Qadi* and Barakaat.* After having carefully considered comments received from both Qadi* and Barakaat,* the Commission decided to continue the restrictive measures against the two parties.²⁸

21. Should Qadi* and Barakaat* wish to pursue their case further, they may go back to the Court of First Instance of the European Communities to challenge the European Union's decision to maintain the measures against them, arguing their case on the basis of the reasons for listing provided. The Court will then have to decide what standard of review it should apply to the reasons for listing. It may decide that the reasons contained in the narrative summary, along with the fact that the Committee agreed unanimously to add the names to the Consolidated List, are enough to satisfy the legal standard.²⁹

22. However, if the Court decides to examine the evidence behind the reasons for listing provided by the Committee, or if it decides it must conduct a complete review of the listing decisions, it will give rise to new and more difficult issues. The narrative summaries indicate the existence of evidence known to Committee members, not all of which is publicly available. There are limits to the ability of the Committee to reveal the reasons behind its decisions, even to a reviewing body, when these are based on intelligence or law enforcement information which belongs to a particular State. The sensitive nature of information pertaining to persons involved in terrorism and terrorist financing, recognized by the Court of Justice of the European Communities in the Qadi* and Barakaat* case³⁰ often inhibits Member States, whether outside or inside the Committee, from sharing this information with others.

23. When and if this situation arises, the Committee will have to react depending on the circumstances. However, the Team believes that the Committee may benefit

²⁵ *Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*, para. 363: "With reference to an objective of general interest as fundamental to the international community as the fight by all means, in accordance with the Charter of the United Nations, against the threats to international peace and security posed by acts of terrorism, the freezing of the funds, financial assets and other economic resources of the persons identified by the Security Council or the Sanctions Committee as being associated with Usama bin Laden, members of the Al-Qa[i]da organi[z]ation and the Taliban cannot per se be regarded as inappropriate or disproportionate".

²⁶ *Ibid.*, para. 375 and operative paras. 2 and 3.

²⁷ Resolution 1822 (2008) directs the Committee to provide narrative summaries of reasons for listing on its website for all entries on the List.

²⁸ See European Union Commission regulation (EC) No. 1190/2008 of 28 November 2008.

²⁹ Any listing by the Committee necessarily requires the agreement of at least two and normally more than two members of the European Union.

³⁰ *Judgement of the Court (Grand Chamber)*, 3 September 2008, paras. 342 and 344.

from consideration of listings by the courts, assessing their judgements against the full body of evidence available. The Team also recommends that if a listed person can demonstrate to the satisfaction of a national court that some element of a narrative summary of reasons for listing is wrong, the State defending the action should forward this information to the Committee.

24. Another set of challenges has arisen in the European Court of Human Rights, which has jurisdiction over certain human rights claims where a claimant has exhausted the remedies in his or her national courts.³¹ Currently, Youssef Mustapha Nada Ebada (QI.E.53.01) has a case pending in the Court challenging his designation by the Committee³² following a ruling by the Swiss Federal Tribunal in Lausanne upholding the sanctions measures against him.³³

25. While not all challenges to the regime concern listings made in 2001, as these do, the Team believes that the procedures currently in place make future challenges less likely and less likely to be successful. The demands that the Committee makes of designating States with regard to submissions for listing, the review process in force and the current de-listing procedures have introduced substantive and significant improvements to the regime. However, the Team believes that the Committee could enhance its procedures still further in all three areas.

C. Listing procedures

26. The responsibility for listing belongs to the members of the Committee, not to the designating State(s). With this in mind, the Team recommends that the Committee view any submission for listing as an invitation to its 15 members to add to it if they can, whether with substantive further reasons for listing or with identifying information, rather than to just agree or disagree with the listing according to their view of the merits of the case. By contributing more directly to the submission, the Committee as a whole may be more confident that the List entry and the corresponding narrative summary are as well founded and as persuasive as possible, and will likely be upheld in the courts, including their own, in the event of a challenge.³⁴

D. Review process

27. The Security Council has directed the Committee to review all names on the List as at 30 June 2008 within two years,³⁵ and to review each entry (again) every three years,³⁶ in order to ensure the Consolidated List is as updated and accurate as

³¹ The 47 member States of the Council of Europe have agreed to abide by the decisions of the European Court of Human Rights.

³² Information provided to the Team by the authorities of Switzerland.

³³ Decision of the Federal Tribunal in Lausanne, Case 1A.45/2007, 14 November 2007, available on the website of the Federal Tribunal at www.bger.ch/fr/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm.

³⁴ The United States practice is already to scrutinize a prospective listing to ensure legal sufficiency. See statement by Assistant Secretary Juan Zarate before the Al-Qaida and Taliban Sanctions Committee, available at www.treas.gov/press/releases/js2189.htm.

³⁵ Resolution 1822 (2008), para. 25.

³⁶ *Ibid.*, para. 26.

possible and to confirm that listing remains appropriate. Some critics argue that an independent body should review the listings, but the Team believes that the decision of the Court of Justice of the European Communities in *Qadi** has changed the terms of this debate. Action by the courts has largely pre-empted any initiative that the Security Council might have taken, however unlikely, to create its own independent review mechanism. The fact that European courts have joined American courts in asserting their jurisdiction over national implementation procedures means that in this context they will in effect offer an independent review of listing decisions by the Committee when these are challenged before them. Other national and regional courts may decide to take similar action.

28. Depending on the way in which the courts deal with challenges to listings, the Team believes that the Committee can take advantage of this independent scrutiny of the implementation of its decisions. If national and regional courts provide a forum for listed persons to bring additional information to the fore and to express their grievances, they may allow a better evaluation of the strengths or weaknesses of the cases against them, especially when the challenge is brought in the courts of the designating States, which will likely have the most information against them.

29. The Team recognizes that the mere fact that a national or regional court might take a decision with regard to the national implementation of a listing has no persuasive value in itself for the Committee. For example, a national court that may have evaluated a listing pursuant to a criminal law standard of evidence although resolution 1822 (2008) makes clear, as did its predecessors, that the measures are preventative in nature and are not reliant upon criminal standards set out under national law, or may have disregarded the reasons for listing as stated by the Committee, or failed to accord them significant deference, could not be expected to influence the Committee to any significant degree. On the other hand, the Committee may value the opinion of a national court that has carefully evaluated reasons for listing as stated by the Committee and has accorded appropriate deference to its fact-finding and decision-making prerogatives. In cases where such court decisions exist, the Team recommends that the Committee give them due weight when reviewing the corresponding listing.

30. The Council has introduced another element of independent review by requiring the Committee to seek the opinion of the designating State(s) and the State(s) of residence and/or citizenship when conducting its review of listings under resolution 1822 (2008). Often these States will not be members of the Committee, and the Committee will afford importance to their views. The Team recommends that the Committee consider a further opportunity for independent input by tasking the Team to gather relevant information from all parties concerned when designating States and States of residence and citizenship disagree on the continued appropriateness of a listing, or to seek more detail where the information provided is vague.

E. Procedures for evaluating de-listing requests

31. The more effective the de-listing procedures of the Committee,³⁷ the less likely that listed individuals and entities will choose to launch challenges in national courts. The focal point established by resolution 1730 (2006) has allowed listed individuals and entities to put forward a case for de-listing without having to rely on the support of their State of residence or nationality. In order to provide greater assurance that the Committee considers the substance of each submission through the focal point, the Team recommends that the Committee provide the petitioner a specific response when it decides to reject a claim.

32. The Team also recommends that the Committee consider ways to gather the maximum information possible about the activities of individuals and entities that apply for de-listing. The Committee may like to appoint the Team, or another expert body, on a case-by-case basis, to collect further information from States or clarify aspects of the petition with the individuals or entities that have submitted it, and provide a report, though without any recommendation regarding the merits of the case.

33. The Afghan Government continues to complain to the Team that its efforts to draw moderate Taliban away from the irreconcilable hard core are hampered by the de-listing procedures, which require more proof of a change of behaviour than the Government is so far able to produce. The Team agrees that the threat of listing and the prospect of de-listing are useful tools in undermining the cohesion of the Taliban, but de-listing need not be a precondition for a listed Taliban to join and promote any peace effort. A reconciled Taliban could achieve much in this regard without needing to be free of the sanctions measures, and by doing so would be able more easily to convince the Committee of his change of behaviour. However, the Team also believes that the List should be dynamic and should tend more towards helping any peace process than impeding it. The Team recommends that the Committee, together with the Afghan Government and with the help of the Team, work out some specific criteria with regard to de-listing requests for Taliban individuals that would make the process more predictable and consistent.

F. Broader challenges to the regime

34. Critics are likely to continue to challenge the position of the Council that the regime is preventative and administrative (rather than punitive) in nature. For example, Martin Scheinin, United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, presented his views to the Committee in late 2008, including an argument challenging this position. While the Committee has made efforts to address the argument concerning the legal status of the sanctions regime, the Team suggests that it could do more to make clear that the measures targeting listed persons do not rise to the level of the deprivations of life, liberty and property that can result from

³⁷ See section 7 of the guidelines of the Committee for the conduct of its work, adopted on 7 November 2002, as amended most recently on 9 December 2008, available at www.un.org/sc/committees/1267/pdf/1267_guidelines.pdf.

criminal conviction under national jurisdiction. The Committee could direct more attention towards its exemption policies and procedures.³⁸

IV. Consolidated List

35. Perhaps a greater challenge to the Committee is maintaining the preventative and forward-looking nature of the sanctions regime. The Team sees this as having two essential requirements. First, the Committee should continue to target those individuals and entities associated with Al-Qaida and the Taliban that pose the greatest current threat to international peace and security. Second, the Committee should do its best to clear away listings that are peripheral to the current threat. Such listings not only undermine the credibility of the regime in the eyes of Member States and the public, but present the greatest risk of adverse court decisions that could impact the regime as a whole. The Team sees no obvious advantage in the List becoming longer, but it does see great advantage in it becoming more dynamic.

36. As of 28 February 2009, the Consolidated List of individuals and entities subject to sanctions as a result of their association with Al-Qaida, Usama bin Laden and the Taliban had 508 entries: 142 individuals associated with the Taliban, and 254 individuals and 112 entities associated with Al-Qaida. Since the Team's last report, there has been a significant increase in the rate of new submissions from States,³⁹ with the Committee agreeing to add 29 individuals and one entity to the List, all for their association with Al-Qaida. The Committee also agreed to remove three names as no longer meriting listing. Member States offered several updates for existing names, and taken together with those prepared independently by the Monitoring Team following its new mandate to do so,⁴⁰ the Committee made 92 changes to entries during this period.

37. The List therefore continues to improve; but it still lacks sufficient identifiers to allow accurate application of the measures to some of the names added in 2001, 2002 and, to a lesser extent, in 2003. The review of all listed names that the Security Council has directed the Committee to conduct by the end of June 2010 may resolve these problems,⁴¹ either by adding identifiers or removing the entries altogether. The Team recommends that the Committee regard this as a priority given the adverse effect that the entries with insufficient identifiers have on the overall credibility of the List and, more importantly, on those individuals who find themselves subject to sanctions because they have a name similar to an entry on the List, but given the incompleteness of that entry, cannot demonstrate irrefutably that they are not the intended target. The Team recommends that in the process of conducting its review of all entries on the List, in cases where a name lacks sufficient identifiers, the Committee encourage the designating State either to provide the minimum of full name, date and place of birth and nationality, or to submit a de-listing request.

³⁸ Also noted as important by the Court of Justice of the European Communities, see Judgement of the Court (Grand Chamber) of 3 September 2008 in joined cases C-402/05P and C-415/05P, para. 364.

³⁹ The Committee added 31 Al-Qaida individuals and one entity to the List in 2008, one Taliban and seven Al-Qaida individuals in 2007, and 18 Al-Qaida individuals and six entities in 2006.

⁴⁰ Resolution 1822 (2008), annex I (I).

⁴¹ Resolution 1822 (2008), para. 25.

A. Distribution of the List

38. In many States, it is extremely difficult to locate a copy of the List or any other information about the sanctions regime on national websites. This means that implementation is limited to those official and private sector bodies that receive the List directly from the relevant authorities. It is highly unlikely that this includes all those who have a potential part to play in implementation. In States that do offer a web-based version of the List, most incorporate the names into a more extensive national list of sanctioned parties;⁴² and while in some States, the Ministry of Finance maintains the List on its website,⁴³ in others it is the Ministry of Foreign Affairs or some other department that does so.⁴⁴ There is a wide variety of national practice, both in what elements of the List are included and where it may be found.⁴⁵

39. The Team recommends that all national departments or agencies that have a role to play in the implementation of the measures make clear reference on their websites to the Al-Qaida/Taliban sanctions regime and the Consolidated List, and note where it may be located, adding, wherever possible, a link to the website of the Committee.⁴⁶ It would also help if all Member States were to ensure that the List was available in full, at least through the websites of their ministries of finance and immigration departments. If the List is included as part of a State's national list, the website of the ministry in charge should make this clear, as well as offer a link to the original.

40. Some States are reluctant to rely on the web-based version of the List, preferring to wait for a hard-copy official notification of any changes. The Team continues to recommend that all States make use of the Committee website to access the most up-to-date version of the List and so ensure that sanctions are applied to new listings in a timely manner.⁴⁷ Where States insist on having a hard copy, the Team recommends that as soon as they have received it, they authorize their financial institutions and other relevant bodies to check the electronic version of the List for changes so as to ensure quick and accurate implementation. An alternative is for the State to maintain its own web-based version of the List, but this may lead to mistakes unless the State downloads a copy from the Committee website or employs an automated data migration system.

41. One advantage of a State posting a copy of the List on an official website is that it may also display the contact details of the official responsible for overseeing national implementation of the measures. The need for a contact point to allow speedy clarification concerning entries on the List, or issues to do with sanctions implementation, is expressed frequently in many States in both the private and the public sectors, and the Team suggests that the Committee encourage Member States to appoint a national enquiry point for the Al-Qaida/Taliban sanctions regime that

⁴² For example, the United States; see www.ustreas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf.

⁴³ For example, the United Kingdom; see www.hm-treasury.gov.uk/fin_sanctions_alqaida.htm.

⁴⁴ For example, Australia; see www.dfat.gov.au/icat/regulation8_consolidated.xls.

⁴⁵ For example, the Reserve Bank of India circulates the List in hard copy and refers to it on its website, available at www.rbi.org.in/scripts/BS_ViewBulletin.aspx?Id=9240.

⁴⁶ South Africa publishes amendments in the official gazette and refers to the Committee website, available at www.info.gov.za/view/DownloadFileAction?id=94218. Pakistan publishes the List regularly in the official gazette, but not in electronic format.

⁴⁷ See the Team's eighth report (S/2008/324, para. 35).

should also have easy access to the Committee and the Team.⁴⁸ The enquiry point could also act as the national focal point for all United Nations and other multilateral counter-terrorism initiatives.

B. Format of the List

42. The Committee has endorsed a recommendation by the Team that it enhance the presentation of the List by improving its format,⁴⁹ and based on its belief that the design of an effective sanctions list should focus primarily on the requirements of the end-user, the Team has begun to consult with interested parties in both the public and the private sectors. The Team invites all those interested to contribute to this work and hopes that through wide consultation it may come up with a format that all United Nations Security Council sanctions regimes could follow, and that would provide a model also for regional and national bodies that compile their own sanctions lists. Based on the new format, the Team will also recommend a revised cover sheet⁵⁰ for Member States to use when submitting names for designation so that entries on the List contain the same type of information in a similar form as may be presented, for example, to a border guard in a travel document or to a bank as proof of identity.

C. The Taliban section of the List

43. Despite the huge amounts raised from opium production, the entries for only four individuals in the Taliban section of the List mention involvement in the drug trade. The Security Council continues to urge States to consider this form of financing as sufficient evidence of association with the Taliban to merit submission for listing,⁵¹ and the Team believes that as the international community targets regional drug traffickers it should focus on those who make payments to the Taliban and are vulnerable, by virtue of the visibility of their assets, to action under the sanctions measures. The Team recommends that the Committee direct the Team, in conjunction with relevant States, the United Nations Assistance Mission in Afghanistan (UNAMA) and UNODC to identify key figures that are associated with the Taliban in this way, as well as individuals and businesses established by the Taliban to manage their cash flows, so as to allow the Committee to consider their designation for listing.

D. Dead people on the List

44. In resolution 1822 (2008), the Security Council directs the Committee to consider an annual review of individuals on the List reported to be deceased.⁵² This too is an issue that affects the credibility of the List, and also the lawful heirs of the deceased who find that their assets remain frozen. As of 28 February 2009, there

⁴⁸ See the Team's sixth report (S/2007/132, paras. 61-64), and seventh report (S/2007/677, para. 138).

⁴⁹ S/2008/408, para. 4.

⁵⁰ The cover sheet was first introduced as an annex to resolution 1735 (2006).

⁵¹ Resolutions 1735 (2006), para. 12; 1806 (2008), para. 30; and 1822 (2008), para. 10.

⁵² Resolution 1822 (2008), para. 22.

were 24 individuals on the List recorded as reportedly dead. The Team believes that a further 15 may fall into this category, though it has not been able to get official confirmation of their deaths. Several States have told the Team that although they may believe that a listed person is dead, they have no practical way to confirm this.

45. The Team recommends that when conducting its review of listed individuals reported to be dead, the Committee aim to accede to any pending de-listing request for the individual if nothing has been heard to contradict an official report of the death within 12 months. If no pending de-listing request exists, the Team recommends that the Committee Chairman, acting in his national capacity, submit a de-listing request for the individual concerned. In cases where the death has been widely reported but for which there is no official confirmation, the Team recommends that the Committee consult with relevant States, including the designating State and the State of nationality and the State where the individual was last located, and encourage them to submit a de-listing request if two years have passed without further information.

46. Some States have expressed concern that if the estate of a dead person is no longer subject to the assets freeze, it may be used to fund terrorism. The Team argues that if the beneficiaries of the estate are associated with Al-Qaida or the Taliban, their names should appear on the List, or at least be subject to assets freeze measures at the national level. In this case, the inheritance of those parties will remain frozen. States are also concerned that the estate of a listed person may contain assets that were acquired illegally; the Team believes, however, that this is a matter for law enforcement investigation and should not be a reason to deny rights of inheritance.

E. Narrative summaries

47. Although in earlier resolutions the Security Council called on States to notify sanctioned parties of their listing,⁵³ and asked States when submitting names to say what part of the statement of case could be publicly released,⁵⁴ many States and other bodies have complained that listed parties have no opportunity to learn why they have been added to the List.

48. To ensure proper notification of the listed parties, as well as of the authorities of States outside the Committee, and to allow them to know some of the reasons behind the listings, the Security Council, by resolution 1822 (2008), directed the Committee, with the assistance of the Monitoring Team and in coordination with the relevant designating States, to make accessible on the Committee website a narrative summary of reasons for listing for all entries on the Consolidated List.⁵⁵

49. The Committee has now agreed the process for drafting the narrative summaries and how they should appear on its website. It has also determined the order in which the Team should prepare the narrative summaries, giving priority to listings subsequent to the adoption of resolution 1822 (2008) and to cases which are before the courts so as to assist those States that face legal challenges to their implementation of the sanctions. The Committee has also agreed, in so far as is

⁵³ See resolutions 1735 (2006), para. 11 and 1822 (2008), para. 17.

⁵⁴ See resolutions 1735 (2006), para. 6 and 1822 (2008), para. 12.

⁵⁵ See resolution 1822 (2008), para. 13.

possible, to coordinate the drafting and approval of narrative summaries with its review of the listings, as required by paragraph 25 of resolution 1822 (2008).⁵⁶ As of 28 February 2009, the Committee had approved the posting of 19 narrative summaries linked to the corresponding entries on the Consolidated List, and the Team expects to have presented drafts for the remaining 409 List entries, in conjunction with the designating States, by May 2010 so as to fit with the timetable for the review by the Committee.

50. The drafts are prepared by the Monitoring Team based on a variety of available official information but must be agreed with the designating State before submission to the Committee. The Committee may then amend them before approving their publication. The first paragraph of the summary states the basis for listing according to the latest resolution that applied at the time. The second section provides more detailed information on the reasons for listing. Finally, the narrative summary records other List entries that are linked with the listed party.

51. The narrative summaries do not identify the designating States nor provide information that the designating States regard as classified or privileged. They therefore do not necessarily provide a summary of all the reasons for listing considered by the Committee. The summaries are distinct from the List entries and do not include information concerning the listed party's identity or whereabouts. These details will continue to appear on the List itself.

52. The Team recommends that when the Committee decides to remove an entry from the List and move it to the de-listing section of its website,⁵⁷ it delete altogether the corresponding narrative summary. The Team also recommends that the Committee update the corresponding narrative summary whenever it reviews an entry on the List. This may be at the three-year intervals envisaged in paragraph 26 of resolution 1822 (2008), or when the Committee considers but rejects a de-listing request, or at some other time that the Committee decides to discuss a particular entry, or when the Team provides the Committee with new information.

F. Handling requests for information

53. As the quality of the entries on the List has improved, Member States have found less need to seek further information about them from the Committee. Once the narrative summaries for all listed entries are posted, this need should decline still further. But both the International Criminal Police Organization (INTERPOL) and the private financial sector have continued to argue for a Committee enquiry point that they could consult, if only as a way to get their questions passed to the designating State for reply.⁵⁸ The Team recognizes that neither the Committee nor its secretariat has the capacity to act as a 24/7 enquiry point, even if only as an intermediary between the enquiring and designating States, but it does recommend that a designating State indicate at the time of submission whether the Committee may pass its identity to another State without further reference in the event of a question concerning the identity of the proposed listing. If all States also set up their

⁵⁶ See guidelines of the Committee, sect. 9.

⁵⁷ Available at www.un.org/sc/committees/1267/removed.shtml.

⁵⁸ See the Team's eighth report (S/2008/324, para. 68).

own enquiry points, this would allow issues to be channelled quickly and accurately between them and an answer to be provided in a relatively short time.

V. Assets freeze

A. Overview

54. To be effective, the assets freeze must have an element of surprise; delays in implementation following a listing by the Committee seriously undermine its likely impact, allowing individuals and entities that learn of their listing before the assets freeze is applied to move or conceal assets. Yet in some States the circulation of the Consolidated List and its updates to national authorities and banks can take anywhere from a few days to several weeks. Lack of judicial or regulatory capacity exacerbates the problem. Some States require court orders before action can be taken against new listings, but have no mechanism to obtain these immediately. Other States may be legally able to apply the assets freeze, but lack the administrative capacity to do so. However, the relevant resolutions make clear that States must implement the measures without delay, not as soon as possible.⁵⁹

55. The Monitoring Team will continue to work with the Security Council Counter-Terrorism Committee Executive Directorate to identify capacity gaps and other impediments to immediate implementation and draw up recommendations to address them.

B. Integrating international effort

56. The Team has also engaged with relevant international bodies beyond the United Nations family in an effort to spread awareness of the Al-Qaida/Taliban sanctions regime as a means to combat the risks of terrorist financing. Through participation in Financial Action Task Force (FATF) meetings, the Team has been able to offer suggestions for revised guidelines and interpretive notes relevant to Task Force special recommendation III on freezing and confiscating terrorist assets.⁶⁰ The Team also notes that compliance with the Al-Qaida/Taliban sanctions regime is now an integral part of the mutual evaluation reports compiled by the Task Force, FATF style regional bodies, the World Bank and the International Monetary Fund (IMF). This engagement appears to be having effect; for example, one Member State identified a mutual evaluation by a FATF style regional body as the primary reason for improving its implementation procedures for the sanctions regime.

57. In order to exploit the reach of relevant international bodies more thoroughly, the Team recommends that the Committee agree to encourage the Financial Action Task Force, the FATF style regional bodies, IMF, the World Bank, the Organization for Economic Cooperation and Development (OECD), the Egmont Group of Financial Intelligence Units, and other bodies with which the Team is in touch to

⁵⁹ See resolution 1822 (2008), para. 1 (a).

⁶⁰ See www.fatf-gafi.org/document/9/0,3343,en_32250379_32236920_34032073_1_1_1_00.html. The Financial Action Task Force expects to finalize the new versions by the end of June 2009.

introduce hyperlinks from their websites to the Committee website, just as other international and regional organizations already do.⁶¹

C. Helping States to identify and deal with terrorist financing

58. Evidence of terrorist financing, so far as it is available, suggests that Al-Qaida and the Taliban rely on two main sources of income: donations and the proceeds of crime, including from narcotics. The best targets of the assets freeze measure, from an operational point of view, are donors. These are generally people who are sympathetic to what they understand as the aims and objectives of the Taliban and Al-Qaida, but are not members of cells or even of groups. They are individuals with known identities who own businesses or other assets that are visible to the authorities; a freeze of their assets would therefore have immediate consequences.

59. While donors may take care to provide money covertly, they risk their security when they deal with fund-raisers or when they seek a channel through which to make their donations. The increasing worldwide scrutiny of terrorist collection methods should allow security authorities to gain some idea of the sources of donations. The Team has encouraged States to deter donors by submitting for listing any that are known, and by sensitizing potential donors to the possibility of listing and its consequences, should such activity be discovered.

60. The criminal ways in which Al-Qaida and its supporters raise money are generally indistinguishable from the vast amount of common, non-terrorist-related crime, such as credit card and other bank fraud.⁶² It is often hard enough to detect the crime in the first place, let alone identify a terrorist-related motive behind it. The growing variety of ways to transfer money either anonymously or with little risk of attracting attention, such as via stored-value cards, shared ATM cards or through the pretended sale of goods on the Internet, presents a further challenge to States.

61. The effect of the global financial crisis may lead to a reduction in donations and an increase in crime as a means for Al-Qaida and the Taliban to raise money. In any case, the funding of terrorism through crime suggests a need to coordinate law enforcement investigations with counter-terrorism work. Some States are well advanced in promoting a regular exchange between their security agencies, financial intelligence units and police services, but even where this occurs, there is sometimes insufficient dissemination of knowledge, information and training. To address this, and to promote the timely identification of Al-Qaida and Taliban financiers and their activities, the Team recommends that the Committee, through the Team and in coordination with the Counter-Terrorism Committee and its Executive Directorate, and together with the Terrorism Prevention Branch of UNODC, consult other relevant international and regional organizations to survey current practice and offer advice to States on how they might overcome the universal tendency of law enforcement agencies and counter-terrorist units to work separately.

⁶¹ For example, the Asia/Pacific Group on Money Laundering has a link to the List: www.apgml.org.

⁶² See, for example, the report on terrorist financing, available at www.fatf-gafi.org/dataoecd/28/43/40285899.pdf.

D. Unregulated cash transfers

62. In many parts of the world cash transfers, especially via hawala brokers and other alternative remittance systems, are an essential part of the economy. The Team is strongly of the view that States should recognize the inevitability of such informal arrangements, especially where they serve a particular community by facilitating remittances to a particular area. Though one way to suppress this business may be to encourage financial institutions that operate in the formal sector to be more competitive in remitting small amounts, it is highly unlikely that they could ever truly rival the speed, efficiency and cost of established hawala brokers.

63. The Team recommends therefore that States follow the example of the United Arab Emirates, where hawala brokers must register with the Central Bank and submit all transactions for official scrutiny, or otherwise ensure that hawala brokers implement the same due diligence rules that govern the formal sector, check against the List and submit suspicious activity reports. Hawala brokers are better placed than most of their competitors to apply "know your customer" rules, given the intimate nature of their business and its dependence on trust, but they do not generally have the capacity or habit of checking names against lists or otherwise contributing to counter-terrorist financing regimes. From its discussions with hawala brokers, the Team believes that they are ready to join the fight against terrorism financing, so long as it does not unreasonably increase their costs, and recommends that States bring them into the fold rather than allow them to continue without any control or drive them underground.

E. Charities

64. Charities have proved an attractive target for terrorist financiers, but designation can present particular difficulties in States where the charity is based or where its funds are disbursed. The sanctions regime demands a comprehensive freeze of all assets of a listed party, which effectively puts it out of business. In the case of a charity this can mean that many genuine charitable disbursements come to a halt. The Team recommends that when designating a charity, which, for example, operates schools, clinics or refugee centres, the Committee offer relevant States, through the Team, immediate assistance in drafting a plan, for approval by the Committee, which would allow such work to continue under State supervision.

F. Private sector

65. A check against the List by a private sector financial institution in Bahrain in July 2008 resulted in the arrest and deportation of Ruben Pestano Lavilla Jr. (Q.I.L.247.08).⁶³ However, all too often, banks and other institutions find it hard to be certain that they have a match with an entry on the List and they seek help. In many States they have nowhere to turn to.⁶⁴ In addition, private financial institutions often seek intelligence briefings on terrorist financing to help them

⁶³ Official briefing by the authorities of Bahrain.

⁶⁴ The United States Office of Foreign Assets Control (OFAC) receives about 100,000 calls per year from financial institutions seeking further information on entries on the OFAC list (source: OFAC).

locate and freeze assets and to know what types of transaction to look out for.⁶⁵ However, it is not easy to overcome the reluctance of the owners of the intelligence to share it, whether for security or other reasons, or to devise a way to do so securely and effectively. For example, there are about 18,000 financial institutions in the United States that are obliged to implement the national sanctions regime,⁶⁶ which suggests an overwhelming logistical and security challenge to any information-sharing process. Faced with these difficulties, the best way to share information may be to ensure that the List itself contains as much detail as possible and that the narrative summaries on the Committee website complement the entries with a description of the type of activity that has led to the listing.

66. The Team continues to attend annual meetings with regulators and representatives from the Wolfsberg Group of private banks. This event has shown that there is a great deal of expert knowledge in the private sector that the Committee can harness to improve the effective implementation of the assets freeze. Most issues raised focus on facilitating searches of the List, and the Team has received many useful suggestions for its design of a new Consolidated List format. As a further result of these contacts, the Team has initiated a project within the Counter-Terrorism Implementation Task Force (CTITF) to examine through trial records and other factual documents whether it is possible to draw up an instructive list of indicators of terrorist financing which could be used by banks, especially for training purposes, as well as by Member States.

67. A concern expressed to the Team by many financial institutions is that they may be subject to financial penalties if they hold up a transaction because of a suspicion, later proved unfounded, that it may originate from or aim to benefit a listed party. Banks wish to be held not responsible for loss as a result of their implementation in good faith of the sanctions measures. The Team agrees that the terms of this and other safe harbour provisions should be clear and internationally applicable and recommends that the Security Council direct States to provide adequate legal protections to financial institutions so as to promote effective implementation of the assets freeze.

68. The large number of one-word "also known as" or alias identifiers on the Consolidated List presents a problem for financial institutions that enter all names on the Consolidated List into their electronic search filters, particularly those with global operations. Their search filters are programmed to select for further review any payment instruction message containing any entered name. So, for example, searches against the List entry for Aly Soliman Massoud Abdul Sayed (Q1A.229.07), which contains the alias "Adam", will throw up for review all payment instruction messages containing the name Adam. Similarly for "Joe", which is listed as an alias for Yazid Sufaat (Q1S.124.03), and "Henry", an alias for Amran Mansor (Q1M.116.03). A search against such identifiers is extremely unlikely to yield an actual match to the relevant List entry and the resources spent by financial institutions checking and discarding the resultant false positives takes time and effort away from examination of more solid matches and undermines support for the process.

⁶⁵ The 11 major international banks that comprise the Wolfsberg Group had over 200 million transactions in 2007 with hundreds of thousands of possible hits against sanctions lists (source: Wolfsberg Group, May 2008).

⁶⁶ As related to the Team by the Director of the United States Office of Foreign Assets Control.

69. The authorities in the United Kingdom of Great Britain and Northern Ireland have allowed financial institutions to avoid entering the one-word alias identifiers into their primary filters, thus eliminating hundreds of thousands of false positives. They have done so by moving such identifiers from the "name" field in their national list of targets (which includes the Consolidated List) to the "other information" field. The Team recommends that the Committee encourage Member States similarly to allow their financial institutions to ignore such identifiers as primary search terms. The Team aims to address this problem through its design of a new format for the List, but in the meantime, the Committee may wish to issue guidance that makes clear that the List provides one-word alias identifiers to help resolve possible matches based on other search criteria.

G. Application of resolution 1452 (2002)

70. Previous reports by the Team have questioned the small number of notifications and requests for exemptions from the assets freeze received by the Committee relative to the overall number of listed individuals and entities.⁶⁷ It is still the case that few States appear to abide by resolution 1452 (2002), which sets out the procedures for such exemptions, and those that do so may find the Committee inconsistent in its response.

71. Rather than maintain a system which is consistently ignored or observed only by States that are likely to be among the more scrupulous in terms of overall implementation, the Team suggests that the Council consider reviewing resolution 1452 (2002) to oblige States to seek agreement from the Committee before allowing an exemption for extraordinary expenses, as at present, but otherwise permit States to decide themselves what is appropriate by national standards to allow for basic expenses, informing the Committee of their decisions. This would make clearer the distinction between the obligation to notify the Committee of payments necessary for basic expenses and the obligation to await the approval of the Committee before allowing the use of frozen assets to meet extraordinary expenses. The Team believes that by providing States with greater discretion, the Council will encourage them to cooperate more closely with the Committee, so enhancing their overall implementation of the measures.

H. Counter-Terrorism Implementation Task Force Working Group on Tackling the Financing of Terrorism

72. As a member of the Counter-Terrorism Implementation Task Force Working Group on Tackling the Financing of Terrorism, the Team contributed to the Group's report, which was finalized in January 2009. Among other areas, the report offers recommendations on the general application of combating the financing of terrorism measures; criminalizing terrorism financing; enhancing domestic and international cooperation; the role of value transfer systems in terrorism financing and combating the financing of terrorism; the role of non-profit organizations in combating the financing of terrorism, and the need to adopt effective measures for implementation

⁶⁷ See in particular the Team's fourth report (S/2006/154), paras. 31, 37-39 and 51-60; its fifth report (S/2006/750), paras. 53-60; and its sixth report (S/2007/132), paras. 16 and 47-51.

of the freezing of assets. All these issues are relevant to the effectiveness, success, and vitality of the Al-Qaida/Taliban sanctions regime.⁶⁸

VI. Travel ban

A. Obstacles to effective implementation

73. The travel ban is a critical part of the sanctions regime but both implementation and impact are lacking. This is not to say that border posts do not check travellers against the Consolidated List, but the few reports of officials having stopped individuals on this basis have all turned out to be cases of mistaken identity. While the entries on the List for at least 75 individuals note that they are reported to be dead or in some form of detention, and while many more are unlikely to cross borders, there have been several reported cases of international travel by listed individuals in contravention of the travel ban,⁶⁹ and the Team believes there may be more. Many of these cases are hard to authenticate through official sources, but not all.

74. One main problem is that the great majority of listed individuals will do their best to avoid detection, either by using forged, altered or false travel documents, or by crossing borders away from control points. Another is the porosity of borders, both in areas of conflict, such as Afghanistan, Iraq and Somalia, and in open areas like the Sahel. The Team has discussed with States their capacity needs with regard to border controls and has routinely passed on the information to the Counter-Terrorism Committee Executive Directorate, which, in addition to UNODC, is the United Nations body that coordinates the need for and delivery of assistance in such areas. One proposal that may merit further consideration in Afghanistan is to rebuild its national database. INTERPOL has already offered to support an initiative to photograph and fingerprint all individuals arrested in Afghanistan, which would clearly be of value in this regard.

75. A further problem is that some listings still contain too few details to make identification easy. This not only makes implementation difficult, but causes unintended individuals unnecessary inconvenience and anxiety. In previous reports,⁷⁰ the Team has recommended that whenever a State applies the travel ban only to find that the individual is not listed, it report to the Committee; but more could be done to help the Committee to identify those listings that cause the most problems through lack of identifiers. The Team recommends that the Committee also call on INTERPOL to inform it when an individual has been mistakenly prevented from crossing a border based on an INTERPOL-United Nations Security Council special notice so that the notice may be revised to prevent a recurrence.

76. When the Team learns of a possible case of non-compliance with the travel ban, it either writes to the State(s) concerned to ask for information, or informs the Committee and seeks instruction. The Team recommends that the Committee consider giving the Team additional authority, on a case-by-case basis, to seek out, collate, assess and verify information related to possible violations of the travel ban.

⁶⁸ The report is available at www.un.org/terrorism/workgroup5.shtml.

⁶⁹ For example, Ahmed Ali Yusaf (QI.Y.47.01). See the Team's sixth report (S/2007/132, box 6).

⁷⁰ For example, the Team's sixth report (S/2007/132, para. 77).

77. One area where violations of the travel ban may occur is in reconciliation talks between the Afghan Government and the Taliban,⁷¹ in so far as these may take place in another country. In this case, the Team recommends that the Committee make clear to the Afghan Government that such talks must respect the sanctions regime but exemptions to the travel ban exist and the Government may apply for them on behalf of the listed Taliban concerned. If the talks are successful, the Committee will need to be involved in considering the resultant de-listing requests, and the Team recommends that the Afghan Government, and all other States involved in the reconciliation process, establish a partnership with the Committee at an early stage to seek appropriate exemptions from the travel ban, as well as to discuss issues to do with de-listing.⁷²

B. Exemptions to the travel ban

78. The Security Council has 11 sanctions regimes, 9 of which impose a travel ban. Like some of these others, the Al-Qaida/Taliban sanctions regime has three categories of exemption: Member States may permit entry to their nationals, they may permit entry for the fulfilment of a judicial process, and they may permit entry when authorized to do so by the Committee. Since the Team last reported, the Committee has adopted and posted on its website a new section of its Guidelines that explains the procedures for applying for a temporary exemption from the travel ban, as well as a fact sheet and an explanation of terms paper.⁷³ The Team recommends that the Committee encourage States to update, where necessary, their national guidelines and regulations in accordance with these documents.

79. In the case where the Committee allows the travel of a listed individual who is resident in a State of which he is not a national, the Team recommends that the Committee make clear that for the purpose of the travel ban, the State should treat him as if he were a national and allow him re-entry.

C. Identifying challenges to implementation

80. The large numbers of travellers who cross borders and the many national agencies that are involved in the process have made it difficult for States to manage the flow securely without creating delays and disruptions. States that do not have a developed capacity to make automated checks against all national and international stop lists are less likely to scrutinize documents used by listed individuals who try to hide in the crowd. The Team recommends that the Committee, in conjunction with the Counter-Terrorism Committee, and together with their expert groups, identify which States are particularly vulnerable and provide tailored advice and assistance to help them towards better implementation.

81. States may also be proactive in this regard by assessing their capacity to implement the travel ban and analysing the deficiencies in whatever system they

⁷¹ Various listed Taliban have been reported to be engaged in these talks, including Wakil Ahmad Mutawakil Abdul Ghaffar (T.I.M.32.01), Abdul Hakim Mujahid Muhammad Awrang (T.I.M.116.01), Abdul Wasay Mu'tasim Agha (T.I.M.29.01) and Abdul Salam Zaef (T.I.Z.62.01).

⁷² See also sect. III.E, para. 33 above.

⁷³ Available at www.un.org/sc/committees/1267/pdf/1267_guidelines.pdf.

employ. The Team recommends that the Committee encourage all States to conduct such assessments and to submit them to the Committee if they need assistance.

82. The Committee has produced an information package on the sanctions regime that several international organizations have begun to use, not just to improve their own understanding, but also for briefing and training courses. The Team recommends that the Committee also include the information package on its website. INTERPOL is one user of this package, and the Team has discussed providing a version more precisely suited to its training courses for police and border control officers. The Team recommends that the Committee authorize this and similar work with other international bodies. The Team also recommends that the Committee encourage States to use the information package when training national officials who may have to deal with the implementation of the travel ban.

VII. Arms embargo

A. Definition of the arms embargo

83. The majority of States view the arms embargo largely as a requirement to control their arms exports through licensing, while some also enforce it through domestic arms regulations. Few, if any, States have implemented the embargo to its full extent, which requires the control of arms-related materials and military technical advice, assistance, and training, the prevention of any indirect provision of the above, and control in this respect of their nationals and registered ships and planes beyond their borders. As a partial solution, the Committee has provided on its website a paper that explains the range and scope of the arms embargo.⁷⁴

84. One obligation that States find difficult is to prevent the indirect supply, sale or transfer of arms and related material, or military technical advice, assistance and training, to individuals who are members of listed entities, but are not themselves listed. The Committee could, as a first step, clarify that compliance with the indirect provision obligation requires States to detect and identify non-listed individuals acting as part of a listed entity for the purposes of obtaining arms, related material or military technical advice. Secondly, while listing such individuals should be a priority, the Committee could encourage States to share information about them through other, more operational channels, including those established by INTERPOL.

B. Implementation of the arms embargo

85. A practical measure of the effectiveness of the arms embargo and of its comprehensive implementation is whether Al-Qaida, the Taliban and their associates are forced as a result to use less efficient arms and related materiel with less sophisticated military skills. Success in these terms varies globally: in most areas, Al-Qaida associates have had to resort to improvised means of attack and their frequency is limited; in other places, such as Afghanistan, the Afghan-Pakistan border area, Somalia, Iraq and small areas of the Philippines, they have the support of an active and ample logistical supply and of military recruitment and training

⁷⁴ Available at www.un.org/sc/committees/1267/pdf/EOT%20Arms%20embargo_ENGLISH.pdf.

networks. The burden of implementation in these cases continues to extend beyond the boundaries of the States concerned, including to States where funds and arms originate and States whose nationals are involved in their supply. With access denied to such external support and safe havens, the insurgency campaigns would eventually wither away. Thus the work of the Committee on non-compliance continues to be of utmost importance in effective implementation of the arms embargo and in achieving the aims of the sanctions regime.

C. The situation in Afghanistan and Pakistan

86. The fact that Taliban-associated insurgencies in Afghanistan and Pakistan have expanded both in scale and intensity since 2002 suggests insufficient implementation of the arms embargo. This may have resulted from the lack of capacity in the two States most concerned, but the Committee could also try to determine whether other States have failed to prevent the direct or indirect provision of arms and related material to Al-Qaida, the Taliban and their associates in the area, whether from their territories or by their nationals outside their territories.⁷⁵ By doing so, the Committee might also help reduce Al-Qaida affiliated recruitment and terrorist training of individuals from outside the region who intend to conduct terrorist operations elsewhere.⁷⁶

D. The situation in Somalia and the Horn of Africa

87. The absence of an effective government in Somalia has made full implementation of the arms embargo in the Horn of Africa impossible. However, the withdrawal of Ethiopian forces in January 2009, the election of a new president and the commitment of the Security Council to support stabilization of the country⁷⁷ offer Somalia some possibility of recovery. There remain, however, well armed, violent extremists, some of them supporters of Al-Qaida, who are likely to reject any political solution that does not accept their vision of government.

88. States in the region have failed to stem the flow of arms into Somalia and some have themselves supplied weapons and other embargoed assistance to listed persons and entities.⁷⁸ While the Committee may be limited in its ability to influence the general availability of arms in the subregion, it is well placed to deter and deal with instances of wilful non-compliance, referring them to the Security Council as necessary. Given the security and humanitarian impact of continued internal warfare in Somalia, the Committee may wish to remind States, particularly those of the region, of their responsibilities in relation to the Al-Qaida/Taliban arms embargo and the potential repercussions of non-compliance.

⁷⁵ Or failed to ensure that economic resources for this purpose have not been provided by their nationals or by persons within their territory, as required by Security Council resolution 1822 (2008), para. 1 (a).

⁷⁶ Such as Fritz Martin Gelowicz (QI.G.259.08), Daniel Martin Schneider (QI.S.260.08) and Adem Yilmaz (QI.Y.261.08), arrested in Germany and added to the List on 27 October 2008.

⁷⁷ The Security Council recently outlined its position vis-à-vis Somalia in resolution 1863 (2009).

⁷⁸ For example, the Monitoring Group on Somalia reported that Eritrea provided arms to Hassan Dahir Aweys (QI.D.42.01) on several occasions (S/2005/625), paras. 36-42; and (S/2006/229), para. 15.

89. At present, the Consolidated List identifies very few individuals and groups in the Horn of Africa that are associated with Al-Qaida. Most of the entries related to the region were added in 2001, with three more entities listed in 2004.⁷⁹ Since then, several individuals have changed allegiance, or have been killed, detained, exiled or otherwise sidelined,⁸⁰ and new leaders have emerged.⁸¹ Several listed entities have ceased to function⁸² or have morphed into new, unlisted groups.

90. Al-Shabaab is one such group that, while it has no formal relationship with Al-Qaida, has expressed its support for Al-Qaida's leaders and their objectives,⁸³ and is often referred to as a partner by Al-Qaida affiliated groups.⁸⁴ There have been several reports of fighters travelling to Somalia from elsewhere to join Al-Shabaab, and Al-Qaida leaders have encouraged them to do so. Senior leaders are believed to have trained and fought with Al-Qaida in Afghanistan and their statements and videos, which are published by the Al-Qaida related media outlet the Global Islamic Media Front, are aligned with the Al-Qaida agenda.⁸⁵ Al-Shabaab, even though not listed, would appear to fit the criteria covered by the arms embargo in that it carries out armed operations on behalf of and in support of Al-Qaida and acts as a conduit for arms, related material and military training to Al-Qaida members in Somalia.

91. Al-Shabaab which translates as "the youth" has also reportedly recruited and trained children as young as 8 years-old to carry out military operations such as assassinations, planting roadside bombs and other explosive devices for financial reward, leading to death and injury among the children themselves.⁸⁶ These acts are in violation of international law, as well as being conducted within the overall strategy of Al-Qaida.

92. In the context of paragraphs 9 and 25 of Security Council resolution 1822 (2008), the Committee may wish to encourage relevant States to submit for inclusion on the Consolidated List names of individuals and entities from the subregion, such as Al-Shabaab and its leaders, who are associated with Al-Qaida. In

⁷⁹ Al-Haramayn Foundation in Kenya (QE.A.105.04), Tanzania (QE.A.106.04) and Al Haramain: Ethiopia Branch (QE.A.113.04).

⁸⁰ For example, Ahmed Khalfan Ghailani (QI.G.28.01) was apprehended in July 2004 and remains in custody. Fahid Mohammed Ally Msalam (QI.M.34.01) and Sheikh Ahmed Salim Swedan (QI.S.35.01) reportedly died in January 2009.

⁸¹ For example, Ahmed Abdi Aw-Mohammed, Issa Osman Issa, Sheikh Mukhtar Robow Abu Mansoor and Ali Salih Nabhan, are all believed linked to Al-Qaida.

⁸² For example, Al-Itihaad Al-Islamiya/AIAI (QE.A.2.01) has largely ceased to function.

⁸³ In June 2008, Shaykh Mokhtar Abu Zubayr, the Emir of Al-Shabaab, outlined the principles and goals of his organization in terms of the "global jihad". He sent greetings to Mullah Omar (TI.O.4.01), Usama bin Laden (whom he called "our sheikh"), Aiman al-Zawahiri* and other leaders, as well as to Al-Qaida fighters in Algeria and elsewhere. In February 2009, Aiman al-Zawahiri* in turn congratulated Al-Shabaab for "the expulsion of the [Ethiopian] invaders from Somalia". In a related statement, Hassan Abdullah Hersi Al-Turki (QI.A.172.04), a commander of Al-Shabaab who is aligned with Al-Qaida, said that although not affiliated with Al-Qaida as an organization, they are united by a common goal.

⁸⁴ For example, in November 2008, Al-Qaida in Yemen paid its respects to deceased Al-Shabaab leader Aden Hashi Farah Ayrow and referred to Al-Shabaab as part of Al-Qaida's global alliance.

⁸⁵ For example, a video released in December 2008 referred to Abu Yahya al-Libi and Abu al-Hasan al-Saeedi. In September 2008 a statement by Al-Shabaab agreed with Al-Zawahiri "to fight America and Israel and their allies" everywhere.

⁸⁶ For example, in September 2007, a child trained by Al-Shabaab killed a Transitional Federal Government officer near a school in Hamar Jahid. See report of the Secretary-General on children and armed conflict in Somalia (S/2008/352), para. 25.

doing so, it would strengthen implementation by clarifying to Member States which persons and groups in the region are subject to the Al-Qaida/Taliban arms embargo, as might already be implied by virtue of their reported association with Al-Qaida and the prohibition against indirect supply, sale or transfer in paragraph 1 (c) of resolution 1822 (2008).

E. Children and armed conflict

93. Beyond the Horn of Africa, Al-Qaida, the Taliban and their associates have increasingly targeted children in their recruitment and indoctrination campaigns. In Afghanistan, Taliban fighters have reportedly used children to perpetrate attacks, including suicide operations, and in some cases have used them as human shields.⁸⁷ A study by UNAMA has documented cases of children allegedly used as suicide bombers. Most were between 15 and 16 years old and were tricked, promised money or forced to mount such attacks.⁸⁸ Al-Qaida in Iraq* and associated groups there have reportedly used children as suicide bombers and for a range of other tasks including scouting, spying, digging holes for and planting improvised explosive devices, videotaping attacks for financial reward, as well as in more traditional combat roles.⁸⁹ They have also used children as decoys in suicide car bombings.⁹⁰ In Algeria, Al-Qaida in the Islamic Maghreb* has increasingly recruited children to its ranks.⁹¹

94. In the Philippines, Government security forces believe that the Abu Sayyaf Group* and Jemaah Islamiyah* have enticed young people to join their ranks. Video footage of Abu Sayyaf Group members involved in kidnappings has shown adolescent boys carrying rifles. United Nations case studies on children formerly associated with the Abu Sayyaf Group have revealed that the group lured children to join its ranks with the promise of material reward.⁹²

95. Al-Qaida, the Taliban and some of their associates appear to regard children as a readily accessible, impressionable and cheap source of manpower. Apart from the fact that those involved in the recruitment of children act in contravention of the arms embargo by providing human resources to listed entities,⁹³ the Security

⁸⁷ For example, in February 2007, a boy between 12 and 15 years old killed himself and a guard and injured four civilians as he attempted to enter a police station. Also, a 14-year-old boy was caught wearing a suicide vest on his way to assassinate a provincial governor. See report of the Secretary-General on children and armed conflict (A/62/609-S/2007/757), para. 22.

⁸⁸ For example, in May 2008, a boy of 12 was near a joint ISAF/Afghan National Army foot patrol when the suicide vest he carried detonated, presumably by remote control. See report of the Secretary-General on children and armed conflict in Afghanistan (S/2008/695), paras. 22-23.

⁸⁹ Report of the visit of the Special Representative for Children and Armed Conflict to Iraq and the region, 13-25 April 2008, pp. 8-9. Available at www.un.org/children/conflict/_documents/countryvisits/IraqVisitReport.pdf.

⁹⁰ In March 2007, the presence of two children helped facilitate a car loaded with explosives to pass through a checkpoint in north-eastern Baghdad. The car blew up with the children inside. Report of the Secretary-General on children and armed conflict (A/62/609-S/2007/757), para. 53.

⁹¹ Information provided to the Team by the Government of Algeria.

⁹² Report of the Secretary-General on children and armed conflict in the Philippines (S/2008/272), para. 25.

⁹³ Recommendations contained in the eighth report of the Analytical Support and Sanctions Monitoring Team: position of the Committee (S/2008/408), para. 21.

Council by resolution 1612 (2005) urged United Nations entities to take appropriate measures to control inter alia the use and recruitment of children as soldiers. The Team therefore proposes to work with the Office of the Special Representative of the Secretary-General for Children and Armed Conflict to identify areas for possible cooperation.

VIII. Activities of the Monitoring Team

A. Visits and meetings

96. The Team visited 19 Member States between April 2008 and February 2009, three of them jointly with the Counter-Terrorism Committee Executive Directorate and three in order to conduct sanctions workshops at the request of the States concerned. In addition, in October, with the help of the Central Bank of the United Arab Emirates, the Team held its second bankers group meeting on issues related to the effective implementation of the assets freeze, attended by hawala brokers and formal banking sector representatives from the region. A member of the Team also accompanied the Chairman of the Committee on his visit to three States in Africa in March and April 2008.

B. International, regional and subregional organizations

97. The Team believes that regional and international organizations can play a vital role in strengthening implementation of the sanctions measures. In particular they can identify common weaknesses and the reasons behind them. The Team has therefore maintained its close cooperation with international and regional organizations and held meetings during this period with the Organization for Security and Cooperation in Europe, the Organization of American States, the International Maritime Organization, FATF, the World Bank, INTERPOL, the European Union, the Council of Europe, and the African Centre for the Study and Research on Terrorism. The Team also participated in 28 international and regional conferences to promote a better understanding of the sanctions regime and the work of the Committee.

C. Cooperation with the Counter-Terrorism Committee and the Committee established pursuant to resolution 1540 (2004)

98. The Team, the Counter-Terrorism Committee Executive Directorate and the expert group that supports the Committee established pursuant to Security Council resolution 1540 (2004) have made specific efforts to coordinate their participation in international and regional workshops and meetings and to publicize their distinct but connected mandates. With the same objective, the Committee, the Counter-Terrorism Committee and the 1540 Committee approved in May 2008 a comparative table which explains their distinct but complementary roles. This table, updated in November 2008, is available on the websites of all three Committees.⁹⁴

⁹⁴ Available at www.un.org/sc/committees/1267/pdf/Revised%20comparative%20table_ENGLISH%20_7-11-2008_.pdf.

99. The Team has now made 12 joint country visits with Counter-Terrorism Committee Executive Directorate experts and for the first time, in November 2008, participated with the 1540 experts in a border security workshop. The Team continues to coordinate its travel plans with the Directorate and to exchange information prior to and after its trips.

100. In earlier reports, the Team provided details of the common strategy approved by the three committees designed to assist States that have fallen behind with their reporting to the Security Council. The strategy is based on a joint subregional/regional approach, with the initial emphasis on the African region. It involves the three expert groups, with the Terrorism Prevention Branch of UNODC as facilitator, organizing a series of subregional reporting workshops for those officials who are involved in the implementation of the relevant Security Council resolutions or who are responsible for writing their country reports to the three committees.

101. Two subregional workshops took place in 2007 and the third and final workshop for the remaining 14 North and East African States was held in November 2008 in Nairobi. All 53 African United Nations Member States have now been covered under the common strategy. While all three expert groups and the representatives of the participating States have found these workshops useful, two key issues have emerged: first a general lack of understanding by the officials on the ground of the scope of Member State obligations under the Al-Qaida/Taliban sanctions regime, and second, the need for technical assistance to improve implementation of the relevant resolutions.

102. The first of these issues can be alleviated in part by the current efforts of the Committee, with the assistance of the Team, to provide explanatory papers on Member State obligations with regard to the sanctions measures, as well as other useful documents posted on the Committee website.⁹⁵ In addition, the trips made to Member States by the Chairman and the Team allow for direct dialogue with the relevant officials on the ground, and for the sanctions workshops to be conducted by the Team, either on its own or in conjunction with UNODC technical missions to States, also help.

103. At the same time, the three expert groups have sought to increase the dissemination of information on the work and mandate of the three committees and their expert groups through relevant international and regional organizations so as to create further opportunity for Member States to understand what is required of them by the Security Council.

104. To address the assistance needs of States is harder, but possibly more important. As the Team has no mandate to deal with technical assistance, it has adopted the practice of collecting information from States on their needs relevant to the Al-Qaida/Taliban sanctions regime, and forwarding it to the Counter-Terrorism Committee Executive Directorate and to UNODC for action. The Team recommends that as the issue of technical assistance is of common interest to all three Committees, the three expert groups should develop, for the consideration of their respective Committees, another common strategy that sets out a more comprehensive and coordinated approach to technical assistance by both the Committees and their expert groups.

⁹⁵ Available at www.un.org/sc/committees/1267/usefulpapers.shtml.

105. In May 2008, the Committee endorsed the Team's recommendation to develop, in consultation with the Counter-Terrorism Committee Executive Directorate and the expert group that supports the 1540 Committee, a new common strategy to engage with relevant international, regional and subregional organizations, entities and agencies.⁹⁶ The three expert groups have submitted a joint paper for the consideration of the three committees in which they suggest four key organizations for their initial approach.

D. Security Council-INTERPOL cooperation

106. With the encouragement of the Security Council and the Committee, the Team has continued to develop its cooperation with INTERPOL, in particular through the development and improvement of INTERPOL-United Nations Security Council special notices for individuals and entities on the Consolidated List.⁹⁷ These notices have become an important and widely used implementation tool, not only by the 187 member countries of INTERPOL but also by international and regional bodies, the private sector and non-governmental organizations. As of 28 February 2009, INTERPOL had posted on its restricted website 332 notices related to listed individuals, 316 of which are also available on its public website, and 20 notices related to listed entities, available on both the restricted and the public websites. Almost all the restricted versions of the notices are available in all four INTERPOL official languages: Arabic, English, French and Spanish.

107. One advantage of the notices is that they can carry information additional to the List entries, for example photographs, now on 95 notices, which can be of particular assistance to border guards and financial institutions. The Team and INTERPOL recognize the importance of ensuring that the photographs are accurate and work closely with States both to acquire and to verify them.⁹⁸ To enhance the special notices still further, there is a proposal to add the relevant narrative summaries of reasons for listing as approved by the Committee for posting on its website. The Team sees merit in this proposal and recommends that the Committee revise its agreement with INTERPOL to incorporate this suggestion.

108. The INTERPOL Fixed Interpol Network Database and Mobile Interpol Network Database allow relevant officials to check a travel document instantly — in 3 to 4 seconds — against the INTERPOL Stolen and Lost Travel Documents database and their own national or regional databases.⁹⁹ This tool, used in conjunction with the special notices, can greatly facilitate implementation of the travel ban and the Team recommends that the Committee request designating States, wherever possible, to provide passport details on their submissions so as to take full advantage of this facility. INTERPOL has other tools available through its I-24/7 secure global police communications system, such as databases of suspected

⁹⁶ See the Team's eighth report (S/2008/324), paras. 94 and 95, and the position of the Committee on its recommendations (S/2008/408), para. 23.

⁹⁷ These are available at www.interpol.int/Public/NoticesUN/Default.asp.

⁹⁸ The United Kingdom's Metropolitan Police (SO15) Photographic Intelligence Cell (PIC) has added all the images available on the special notices to their facial recognition system so that they can search against them when they receive any terrorist context image for evaluation (source: Metropolitan Police).

⁹⁹ See www.interpol.int/public/FindAndMind/Default.asp.

terrorists and wanted persons, DNA records and fingerprints. These can also help States to implement the sanctions measures effectively and comprehensively.

109. The Stolen and Lost Travel Documents database has grown considerably since its inception in 2002 when it contained 3,900 documents provided by 10 countries. As of 20 February 2009 it contained details of 16,513,637 travel documents, provided by 145 member countries, nearly 9.8 million of which were lost or stolen passports.¹⁰⁰ In 2008 INTERPOL member countries conducted 76,541,088 searches of the database, generating 14,635 hits.¹⁰¹

110. Given the value of special notices to States, it is important to minimize any delay between the Committee's decision to add a name to the Consolidated List and the appearance of the corresponding notice in the INTERPOL database. To facilitate this process, INTERPOL has proposed that the Team and the Secretariat establish access to its I-24/7 secure global police communications system, subject to the agreement of the Committee and the approval of the INTERPOL General Assembly. The Team recommends that the Committee agree.

111. INTERPOL has suggested that the Team attend some of its conferences and seminars that attract staff from national central bureaus so as to brief them on the Committee and how the link between the Security Council and INTERPOL may help their counter-terrorism work. The Team endorses this suggestion and will submit specific proposals to the Committee accordingly.

IX. Reporting by Member States

A. Member States appearing before the Committee

112. In paragraph 30 of resolution 1822 (2008) the Security Council repeats an invitation first extended in paragraph 11 of resolution 1526 (2004) for States to address the Committee for in-depth discussion of relevant issues; so far 10 States have done so,¹⁰² the most recent, in February 2009, being Algeria, which met the Committee to describe what it had done to combat terrorism and to discuss the current level of threat posed by Al-Qaida in the Islamic Maghreb*. The delegation also made a useful suggestion that Committee members might help to gather identifiers on specific names that States wish to propose for listing but for which they lack sufficient detail.

B. Resolution 1455 (2003) reports

113. The submissions by Madagascar in May 2008 and by Kenya in February 2009 brought the number of resolution 1455 (2003) reports received by the Committee to 155, leaving 37 States that have yet to report almost five years after the extended deadline.¹⁰³ Although the Team earlier recommended that the Committee engage

¹⁰⁰ Also provided by the United Nations Interim Administration Mission in Kosovo (UNMIK).

¹⁰¹ Source: INTERPOL.

¹⁰² The United States of America, the United Kingdom of Great Britain and Northern Ireland, the Netherlands, Australia, Sweden, Switzerland, Germany, Denmark, Liechtenstein and Algeria.

¹⁰³ Resolution 1455 (2003) set the deadline at 17 April 2003 and resolution 1526 (2004) extended it to 31 March 2004.

directly with each of the 37 non-reporting States,¹⁰⁴ some States are concerned that this could be heavy-handed or even counter-productive. The Team recognizes that implementation is more important than reporting and recommends that it continue to engage with the non-reporting States singly or in regional or subregional groupings. It will also explore other ways to assist them, including through sanctions workshops.

C. The checklist and new reporting tools

114. Submissions by Madagascar in May 2008 and by the Netherlands in June 2008 increased the number of resolution 1617 (2005) checklists received to 60, leaving 132 States that have yet to submit a checklist nearly three years after the deadline.¹⁰⁵ The Committee needs updated information on the implementation of the measures but has no wish to add to the reporting burden of States.¹⁰⁶ Accordingly the Committee has adopted two new tools that States may use to provide a variety of information for the List, or concerning their implementation of the measures, on a voluntary basis. These are a Voluntary National Assessment of Implementation Survey, and an Annual Statement of Information. The Voluntary Survey is designed to prompt States to provide information of use to the Committee and to remind them of the actions they should take to ensure effective implementation. The Annual Statement is intended to remind States of the action required for all new names added to or deleted from the List during the year. Both tools are available on the Committee website.¹⁰⁷

X. Other issues

Committee website

115. The Team has pointed out previously that although the Committee has made great improvements to its website and has posted many new documents there, Member States and international and regional organizations are often unaware of this. To encourage use of the website, the Committee has introduced a site map accessible from the home page with relevant hyperlinks to the indexed pages. The Committee has also agreed to an e-mail alert system that notifies users of changes to its website, though this service would currently be available only for the English version. To increase the speed and relevance of searches, the search function now limits searches to documents on the Committee website, rather than including the whole United Nations Official Document System as before. In addition, the Committee has agreed how to post the narrative summaries of reasons for listing, as directed by paragraph 13 of resolution 1822 (2008). Users may access these directly from the home page or from the corresponding entry on the List. It has also allowed for the posting of exemptions from the travel ban to help Member States check quickly and accurately whether a claimed exemption exists and remains current.

¹⁰⁴ See the Team's eighth report (S/2008/324), para. 108.

¹⁰⁵ Resolution 1627 (2005) set the deadline at 1 March 2006.

¹⁰⁶ SC/9348.

¹⁰⁷ Available at www.un.org/sc/committees/1267/tools.shtml.

Annex I

Litigation relating to individuals and entities on the Consolidated List

1. The number of legal challenges involving individuals and entities on the Consolidated List known to the Monitoring Team stands at 30. There have been four new cases since its last report, all are described below.^a

European Union

2. In the case of Yasin Abdullah Ezzedine Qadi (QI.Q.22.01) and Barakaat International Foundation (QE.B.39.01),^b the Court of Justice of the European Communities held that the European Union had infringed the basic rights of the petitioners, namely their right to be heard and their right to effective judicial protection, by failing to communicate the evidence justifying the restrictive measures imposed upon them and thus precluding their right to defend against such measures. Accordingly, the court annulled Council of the European Union regulation (EC) No. 881/2002 which implements the assets freeze measure insofar as it applied to Qadi* and Barakaat,* but allowed the measure to remain in place for a period not to exceed three months from the date of the judgement to allow the Council to remedy the infringements found.^c After communicating to Qadi* and Barakaat* the reasons for listing provided by the Committee, and after careful consideration of the comments received from Qadi* and Barakaat,* the European Union Commission enacted a new regulation providing for continued sanctions against them.^d

3. Two cases remain pending before the Court of Justice of the European Communities. These appeals were brought by Shafiq ben Mohamed ben Mohamed al-Ayadi (QI.A.25.01)^e and Faraj Faraj Hussein al-Sa'idi (QI.A.137.03).^f

4. The case brought by Uthman Omar Mahmoud (QI.M.31.01)^g remains pending before the Court of First Instance; a hearing was held in that case in January 2009. Also pending in the Court of First Instance are the four cases brought in 2006 by Abd al-Rahman al-Faqih (QI.A.212.06), Sanabel Relief Agency (QE.S.124.06), Ghuma Abd'Rabbah (QI.A.211.06) and Tahir Nasuf (QI.N.215.06).^h

European Court of Human Rights

5. Youssef Mustapha Nada Ebada (QI.E.53.01) has brought suit in the European Court of Human Rights following rejection of his challenge to the imposition of

^a S/2008/324, annex I.

^b See paras. 19-22 above.

^c *Kadi v Council of the European Union and Commission*, preamble para. 375 and operative para. 3.

^d Commission regulation (EC) 1190/2008 of 28 November 2008.

^e Case T-253/02 and C-403/106 P, *Ayadi v Council*.

^f Case T-49/04 and C 399/06, *Hassan v Council and Commission*.

^g Case T-318/01, *Othman v Council and Commission*.

^h Cases T-135/06, *Al-Faqih v Council*; T-136/06, *Sanabel Relief Agency Ltd v Council*; T-137/06, *Abdrabbah v Council*; T-138/06, *Nasuf v Council*.

sanctions against him by the highest court in Switzerland. He claims violations, *inter alia*, of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (pertaining to the right to a fair trial).ⁱ

Human Rights Committee

6. In December 2008, Belgium received an opinion of the Human Rights Committee, a body created by the International Covenant on Civil and Political Rights,^j with respect to a complaint filed by Nabil Sayadi (QI.S.84.03) and Patricia Vinck (QI.V.85.03), both Belgian nationals and residents. The majority opinion took the view that Belgium had violated article 12 of the Covenant (right of liberty of movement) and article 17 (protection from attacks on honour and reputation). The article 12 violation was because travel restrictions against the petitioners were no longer justified as they did not represent a threat to national security or public order after Belgium had concluded an investigation without prosecution and had petitioned the Committee for their de-listing. The article 17 violation was because the Committee, at the request of and based on information from the Belgian authorities, had published Sayadi's and Vinck's names and identifying information in the context of sanctions against Al-Qaida and the Taliban.

Pakistan

7. The action brought by the Al Rashid Trust (QE.A.5.01) remains pending in the Supreme Court of Pakistan on the Government's appeal from a 2003 adverse decision.^k The challenge brought by Al-Akhtar Trust International (QE.A.121.05) remains pending before a lower court.

Switzerland

8. The Federal Tribunal in Lausanne, the highest court in Switzerland, has rejected a challenge brought by Ali Ghaleb Himmat (QI.H.43.01) to the imposition of sanctions against him. That suit was dismissed on 22 April 2008.^l

Turkey

9. Yasin Qadi* requested the Administrative Cases Bureau, the highest reviewing body for challenges to Cabinet decisions, to reconsider its decision of 22 February 2007 upholding the freezing of his assets. That request was denied.^m

ⁱ See sect. III.B., para. 24 above.

^j See www2.ohchr.org/english/bodies/hrc/index.htm.

^k Information provided by the authorities in Pakistan.

^l Decision of the Federal Tribunal in Lausanne, Case 1A.48/2007, 22 April 2008, available at <http://www.bger.ch/fr/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm>.

^m Decision No. E:2007/1129, K:2008/969 of the Administrative Case Bureau. Information provided by the authorities of Turkey.

United Kingdom of Great Britain and Northern Ireland

10. The Court of Appeal (Civil Division) for England and Wales issued a judgement in the matter of A, K, M, Q, & G v. H.M. Treasury on 30 October 2008.ⁿ "G" is a listed individual subject to the Al-Qaida, Taliban sanctions. Taking a cue from the Court of Justice of the European Communities decision on Qadi* and Barakaat,* the Court held that the United Kingdom must provide a merits based review of the reasons for listing an individual on the Consolidated List who had been proposed for designation by the United Kingdom, but in the meantime maintained the measures against him. "G" has petitioned the House of Lords for permission to appeal.^o

United States of America

11. The United States District Court for the District of Oregon issued an opinion in the challenge by the Al-Haramain Foundation (United States of America) (QE.A.117.04) to its designation in the United States. In an opinion and order issued on 6 November 2008,^p the district court upheld the designation of Al-Haramain Foundation* as "rational and supported by the administrative record". The Court left a number of related and subsidiary issues undecided and called for additional briefing on them.

12. The United States District Court for the District of Columbia dismissed a challenge brought by former Al-Haramain chairman Aqeel Abdulaziz Aqeel al-Aqeel (QI.A.171.04). Al-Aqeel* had challenged, among other things, the United States' refusal to provide him with privileged portions of the administrative record supporting his designation. The court dismissed Al-Aqeel's claims in a memorandum opinion issued on 4 August 2008.^q

13. On 16 January 2009, Yassin Qadi* filed a lawsuit challenging his designation in the United States District Court for the District of Columbia.^r The complaint alleges, among other things, that his designation and the freezing of his assets is a violation of the Administrative Procedure Act and of his First, Fourth, and Fifth Amendment rights^s under the United States Constitution.

ⁿ Available at www.bailii.org/ew/cases/EWCA/Civ/2008/1187.html.

^o Information provided to the Team by the authorities of the United Kingdom.

^p United States District Court for the District of Oregon, civil case No. 07-1155-K1, Al Haramain Islamic Foundation, Inc. and Multicultural Association of Southern Oregon vs. United States Department of the Treasury, Henry M. Paulson, Office of Foreign Assets Control, Adam J. Szubin, United States Department of Justice, and Alberto R. Gonzales.

^q United States District Court for the District of Columbia, Civil Action No. 05-943 (GK), Memorandum opinion of 4 August 2008.

^r United States District Court for the District of Columbia, Case 1:09-cv-00108, Yassin Abdullah Kadi v. Henry M. Paulson, Adam J. Szubin, the United States Department of the Treasury, Office of Foreign Assets Control.

^s First Amendment rights to freedom of speech and freedom of association; Fourth Amendment right to be secure against unreasonable search and seizure; Fifth Amendment rights to due process and to just compensation for the taking of property.

Annex II

Attacks by Al-Qaida and associated groups

1. Al-Qaida and its listed affiliates mounted 78 attacks,^a as recorded by the Team between 1 April 2008 and 27 February 2009, killing 608 people;^b an average of over 55 per month, or close to two per day. These attacks affected the nationals or territory of at least 22 countries.^c Algeria, Iraq, Pakistan, the Philippines, the United States of America and Yemen, as well as Afghanistan and India, suffered the most.^d Ten additional States were the target of terrorist threats from listed groups,^e mainly those based in the Islamic Maghreb and the Arabian Peninsula.

2. The type of attack has varied: 35 per cent involved small conventional weapons; 19 per cent were suicide attacks;^f another 19 per cent involved conventional explosives; 9 per cent involved improvised explosive devices or vehicle-borne improvised explosive devices, but were not suicide attacks;^g 13 per cent were kidnappings, hostage-takings or hijackings,^h and 5 per cent were targeted assassinations.

3. Al-Qaida associates in the Islamic Maghreb, the Arabian Peninsula and Iraq were the most active, accounting for at least 60 per cent of all attacks. Listed groups in South Asia, Jaish-i-Mohammed (QE.J.19.01), Lashkar I Jhangvi (QE.L.96.03), Lashkar-e-Tayyiba (QE.L.118.05), and Harakat Ul-Mujahidin (QE.H.8.01), were responsible for 16 per cent of attacks, as were groups in South-East Asia, mainly the Abu Sayyaf Group (QE.A.1.01). In Central Asia, the Eastern Turkistan Islamic Movement (QE.E.88.02) and the Islamic Jihad Group (QE.I.119.05), an offshoot of the Islamic Movement of Uzbekistan (QE.I.10.01), were responsible for about 5 per cent of attacks.

4. When judged by their lethality, the impact of listed groups is as follows: Al-Qaida in the Islamic Maghreb* was responsible for 26 per cent of all deaths and Lashkar-e-Tayyiba* for 25 per cent. Other groups in South Asia, Jaish-i-Mohammed,* Lashkar I Jhangvi* and Harakat Ul-Mujahidin* account for another 25 per cent, with Al-Qaida in Iraq* at 10 per cent, Al-Qaida itself (QE.A.4.01) 8 per cent and its franchise in Yemen 4 per cent.

^a These figures exclude the Taliban.

^b The Monitoring Team has based its figures on sources it assesses as credible, as well as statements by the groups themselves. Al-Qaida-affiliated groups that are not listed, such as Al-Shabaab in Somalia, are not included in these statistics. These figures may therefore be a conservative estimate of the number of attacks and victims during the period surveyed.

^c Afghanistan, Algeria, Austria, Canada, China, Ethiopia, France, Germany, India, Iraq, Italy, Mauritania, the Niger, Pakistan, the Philippines, Somalia, Switzerland, Tunisia, Turkey, the United States of America, the United Kingdom of Great Britain and Northern Ireland and Yemen. Israel suffered an attack from an unlisted group calling itself Al-Qaida in the Levant.

^d 70 per cent of the attacks recorded by the Team directly affected at least one of these eight countries.

^e Denmark, Egypt, the Libyan Arab Jamahiriya, Morocco, Nigeria, the Russian Federation, Saudi Arabia, Spain, the Sudan and the United Arab Emirates.

^f Attacks planned to damage others and likely to kill the perpetrator.

^g These were unconventional in nature and usually homemade. Suicide vehicle-borne improvised explosive devices are included as suicide attacks.

^h Attacks to abduct somebody, seize transport or commercial vehicle, usually for ransom.



Security Council

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Letter dated 13 May 2009 from the Secretary-General to the President of the Security Council

Pursuant to Security Council resolution 1031 (1995), I have the honour to convey the attached letter dated 8 May 2009, which I received from the High Representative for Bosnia and Herzegovina (see annex), transmitting the thirty-fifth report on the implementation of the Peace Agreement, covering the period from 1 November 2008 to 30 April 2009.

I should be grateful if you would bring the attached letter to the attention of the members of the Security Council.

(Signed) **Ban Ki-moon**



Annex

Letter dated 8 May 2009 from the High Representative for Bosnia and Herzegovina and European Union Special Representative addressed to the Secretary-General

Pursuant to Security Council resolution 1031 (1995), by which the Council requested the Secretary-General to submit to it reports from the High Representative in accordance with annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Conclusions of the London Peace Implementation Conference of 8 and 9 December 1995, I herewith present to you the thirty-fifth report (see enclosure). I would ask you kindly to distribute this report to the members of the Security Council for their consideration.

This is my first report to the Secretary-General since assuming the office of the High Representative for Bosnia and Herzegovina (and European Union Special Representative) on 26 March 2009. The present report covers the period from 1 November 2008 to 30 April 2009.

Should you or any Council member require any information beyond what is offered in the attached report or have any questions regarding its contents, I should be pleased to provide further information.

(Signed) Valentin Inzko

Enclosure**Thirty-fifth report of the High Representative for Bosnia and Herzegovina****1 November 2008-30 April 2009***Summary*

This report covers the period from 1 November 2008 to 30 April 2009. During the past six months Bosnia and Herzegovina has made limited progress on its reform agenda. Nationalist, anti-Dayton rhetoric challenging the sovereignty, territorial integrity and constitutional order of Bosnia and Herzegovina has played the dominant role, despite an effort by three political leaders to open a process of dialogue and compromise. Challenges to the authority of the High Representative and the Steering Board of the Peace Implementation Council have continued to occur. Of particular note are the ongoing attacks by the Government of the Republika Srpska against State institutions, competencies and laws.

Some progress has been made towards meeting the requirements set by the Steering Board for transition from Office of the High Representative to the European Union Special Representative, most notably the adoption of a constitutional amendment incorporating the Brcko District into the Bosnia and Herzegovina constitution and ensuring its access to the constitutional court. Bosnia and Herzegovina also adopted a War Crimes Strategy and endorsed the implementation action plans of the National Justice Sector Reform Strategy.

The European Union military mission in Bosnia and Herzegovina (EUFOR) continues to contribute to a safe and secure environment in Bosnia and Herzegovina. EUFOR is a key reassurance factor in Bosnia and Herzegovina at a time when the political situation remains fragile.

I. Introduction

1. This is my first report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina (as well as that of European Union Special Representative to Bosnia and Herzegovina) on 26 March. In keeping with past practice, the present report assesses progress made towards attaining the goals outlined in previous reports, reviews developments during the reporting period, and provides my assessment of mandate implementation in the most important areas. Considering the decision of the Steering Board of the Peace Implementation Council in February 2008 specifying five objectives and two conditions that must be met by the authorities of Bosnia and Herzegovina before transition from the Office of the High Representative to the European Union Special Representative can be concluded, I have focused my efforts on facilitating progress in these areas. Nevertheless, my time has also been dedicated to addressing negative developments, in particular anti-Dayton rhetoric challenging the sovereignty, territorial integrity, and constitutional order of the country, as well as related attacks on the State institutions of Bosnia and Herzegovina.

II. Political update

General political environment

2. In the lead-up to the November meeting of the Peace Implementation Council Steering Board, the leader of SNSD, Milorad Dodik, the leader of SDA, Sulejman Tihić, and the leader of HDZ, Dragan Čović, signed the so-called Prud Agreement, addressing constitutional reform, resolution of the State property objective for transition from the Office of the High Representative to the European Union Special Representative, implementation of annex 7 in connection with the organizing of a census, a constitutional solution for Brčko's access to the Bosnia and Herzegovina Constitutional Court, and Bosnia and Herzegovina Fiscal Council and budget issues. The agreement, as well as subsequent meetings of the three leaders over the following months, reflected their apparent willingness to compromise on and make progress towards important political issues, including the remaining objectives and condition for transition from the Office of the High Representative to the European Union Special Representative.

3. On the positive side, those discussions contributed to ensuring the passage of the 2009 State budget in January and agreement among the political leaders on an amendment to the Constitution of Bosnia and Herzegovina ensuring the Brčko District access to the Bosnia and Herzegovina Constitutional Court. On 26 March, the Bosnia and Herzegovina Parliamentary Assembly adopted the Brčko amendment, the first change to the Constitution since the Dayton Agreement was signed, with the support of the vast majority of the parties in parliament.

4. Despite these positive achievements, divisive and nationalist rhetoric challenging the sovereignty and constitutional order of Bosnia and Herzegovina continued during the reporting period, along with actions and statements by Bosnia and Herzegovina actors challenging the authority of the High Representative and the Peace Implementation Council Steering Board. Ill-advised discussions on the future territorial organization of the country as part of initial constitutional reform consultations led to all sides falling back to their maximalist positions and in some

cases going beyond what they had previously called for. This further limited the room for compromise. In a number of areas, attempts to roll back previous reforms and undermine existing State-level institutions continued.

5. During the reporting period, Republika Srpska officials and institutions took steps and issued statements furthering the idea of eventual secession of the Republika Srpska from Bosnia and Herzegovina. These steps included an official Republika Srpska platform for constitutional change, foreseeing Bosnia and Herzegovina as a "union of independent States" and alluding to the possibility of citizens of the entity being consulted on the "State structure" or "constitutional status" of the Republika Srpska. In February, the SNSD party of Milorad Dodik adopted conclusions calling for discussions on the possibility for the citizens to "express their will" on whether they "are for the existence of the Republika Srpska within the Dayton territorial and political framework". In the same month, the President of SNSD resented his party's proposal for constitutional reform in the media. The platform was based on a number of "ultimatums", which included the right to hold a referendum on the independence of the Republika Srpska within three years. In April, Dodik expressed the opinion to Radio Free Europe that someday the conditions would be right for the Republika Srpska to follow Kosovo's lead and secede from Bosnia and Herzegovina.

6. The political situation was further complicated by authorities of the Republika Srpska and ruling Republika Srpska parties challenging the legality and validity of decisions of the High Representative. These moves included a letter sent by the Government of the Republika Srpska in February 2009, bypassing State institutions, to the Security Council, stating that "... there is no legal basis for the continued exercise of these peremptory powers; moreover their use has violated the Bosnia and Herzegovina Constitution, the Dayton Accords, other international treaties, and general principles of international law". At a session of the Republika Srpska National Assembly in April, in yet another attempt to divert attention from concrete political issues and reforms, Prime Minister Dodik claimed that "the stability of Bosnia and Herzegovina is most endangered by the long-term and illegal activity of the Office of the High Representative" and repeated the assertion that decisions, acts and removals by the Office of the High Representative had no basis in the Dayton Peace Agreement or under international law. These steps were taken despite a clear reminder of the Peace Implementation Council Steering Board in November and then again in March to the parties to meet their obligations and ensure full cooperation with the High Representative.

7. Developments in an ongoing investigation by the Bosnia and Herzegovina State Prosecutor and State Investigation and Protection Agency into alleged criminal offences of the Republika Srpska Prime Minister, Milorad Dodik, and others prompted a visceral political response from Republika Srpska officials and representatives from the Republika Srpska within State institutions, including threats of unilateral withdrawal from Bosnia and Herzegovina State institutions. These unacceptable reactions were prompted by the submission of an investigation report from the State Investigation and Protection Agency to the prosecutor and no formal charges have been raised.

8. These developments reduced the space for significant progress on the legislative agenda, including reforms required for further progress towards the European Union, visa liberalization, and agreed reforms stemming from the Prud

Agreement. The Prud process highlighted divisions within Bosniak politics both between SDA and the Party for Bosnia and Herzegovina, as well as divisions within SDA. In December, the President of SDA, Sulejman Tihic, delivered a speech calling for a shift in Bosniak politics, away from a philosophy of victimhood and towards practical engagement with representatives of the other two constituent peoples, in order to facilitate the compromises needed to move the country forward. Through his ongoing support for the Prud process, Tihic exposed himself to attacks from within and outside his party. In March and April, Bakir Izetbegovic, son of SDA founder Alija Izetbegovic, and Adnan Terzic, former Chair of the Council of Ministers, announced that they would challenge Tihic in the race for the post of SDA President, which will be decided at the party congress late in May.

9. Beyond the ongoing political tension, the global economic crisis accelerated the already difficult economic situation in the country. The Federation has been hardest hit, because of its bloated administrative apparatus and unrealistic social benefit commitments, especially towards the veteran population, bringing it close to economic collapse. In March, the Government was forced to take several million KM in commercial loans from a number of private banks. Media speculation about the imminent financial collapse of the Federation was accompanied by repeated reports of an impending vote of no confidence in the Government. In April, the Prime Minister of the Federation, Nedžad Brankovic, of SDA, was indicted for abuse of office by the Sarajevo Cantonal Court, leading for calls for his resignation, including from his own party president. The President of HDZ, Dragan Covic, was also indicted in April.

10. Political engagement between Tihic and Covic at the national level did not translate into agreement between the two largest Bosniak and Croat parties on the election of a new mayor in Mostar. At the end of the reporting period, six months after the 2008 municipal elections, Mostar still had no mayor. With ongoing constitutional reform discussions and media speculations about possible future changes to the organization of Bosnia and Herzegovina and the Federation, the continuing failure of the parties in Mostar to reach agreement is having a negative impact on the situation in the city.

11. In April, an initial breakthrough was achieved in attempts at finding an acceptable and sustainable resolution of the State property apportionment issue, whereby each level of government would receive the property needed to carry out its competencies. An acceptable and sustainable resolution of State property is the second of the five objectives set by the Peace Implementation Council Steering Board for transition from the Office of the High Representative to the European Union Special Representative. The breakthrough came when the Council of Ministers finally took steps to initiate an inventory of State property, following months of pressure from the international community.

12. As previously noted, the Prud Agreement of November and subsequent meetings addressed the issues of constitutional reform. Discussions in November and December initiated a process of discussing such reform through the Bosnia and Herzegovina Parliamentary Assembly, with the three party presidents signing and forwarding to the parliament an Initiative for Changes of the Constitution of Bosnia and Herzegovina which proposed, inter alia, that their parties' caucuses, together with other delegates, should prepare a draft decision on the commencement of reform talks for each house to endorse.

13. Despite these initial positive first steps, the third meeting of the Prud leaders in Banja Luka in January exposed deep divisions between the leaders in their visions of the future organization of the country. The leaders agreed to reorganize Bosnia and Herzegovina on the basis of four territorial units forming the "middle level" of government, but soon revealed in the media wholly contradictory understandings of what this formulation would mean in practice. The Banja Luka agreement provoked a heated public debate and raised political tensions, setting back discussions on constitutional reform. When the Prud leaders reconvened in the middle of February in Mostar to exchange their respective platforms on constitutional reform, the SNSD President served his colleagues with a series of ultimatums and the talks broke down. In addition, conclusions adopted by the Republika Srpska National Assembly in mid-February demonstrated a lack of readiness to accept constitutional changes that would boost the authority and effectiveness of State institutions and enhance the capacity of Bosnia and Herzegovina to take part in Euro-Atlantic integration.

14. Actions by Republika Srpska parties and institutions on constitutional reform should also be viewed in the light of disingenuous claims in the media that the State of Bosnia and Herzegovina has usurped responsibilities belonging to the entities. After repeated official requests by the Office of the High Representative since August for the Republika Srpska authorities to provide a list of competencies alleged by Republika Srpska representatives in the media to have been illegitimately transferred to the Bosnia and Herzegovina State, the Office of the High Representative received a list of 64 items in February. This list was expanded to 68 alleged items and adopted as an "information" by the Republika Srpska Government and sent to the Republika Srpska National Assembly, which is still debating the document.

15. The Republika Srpska list includes a number of responsibilities that are expressly listed in the Constitution as belonging to Bosnia and Herzegovina (including matters related to immigration and asylum, import and export of arms, and international and inter-entity criminal law enforcement). Certain matters listed have already been subject to challenges before the Constitutional Court of Bosnia and Herzegovina, which has decided that Bosnia and Herzegovina-level legislation covering those matters is in line with the distribution of competencies provided for in the Constitution. The list is also misleading in that it alleges that there have been transfers of competency in areas where Bosnia and Herzegovina-level legislation is being discussed but has not been adopted owing to various types of blockades by delegates elected from the Republika Srpska. A number of these are matters that must be adopted at the Bosnia and Herzegovina level in order to implement the Stabilization and Association Agreement or comply with the European Partnership document.

16. In fact, the entities have agreed to transfer certain constitutional responsibilities to the State on only four occasions, and have done so as provided for in the Constitution. SNSD and the Republika Srpska authorities in general appear determined to limit significant constitutional reform while, at the same time, seeking to expand Republika Srpska competencies through false claims that the State has illegitimately usurped entity prerogatives.

17. Despite these setbacks, the SDA President and Deputy Speaker of the Bosnia and Herzegovina House of Peoples, Sulejman Tihić, succeeded in getting a

conclusion adopted in that house to initiate parliamentary discussions on constitutional reform. Although the delegates of SNSD voted in favour, that party's leaders in the House of Representatives repudiated the decision of their colleagues in the upper house as inimical to Republika Srpska interests. Overall, SDA and HDZ remain determined to stick to what was agreed (or supposedly agreed) during the Prud process, while SNSD is inclined to backtrack and to shelter behind the demand that the Republika Srpska National Assembly must have primacy in any discussions of constitutional reform.

18. One lesson of the failed "April Package" in 2006 is that negotiations on constitutional reform should not extend into an election year, when nationalistic rhetoric is likely to increase, room for compromise is reduced, and the risk of failure — and collateral damage to the political situation — is great. Since 2010 is another election year, time in 2009 to deliver meaningful constitutional changes, which the country will undoubtedly need, would be limited. In addition, any eventual constitutional amendments would almost certainly affect election rules and require subsequent changes to the election law.

III. European partnership requirements and visa liberalization

19. Despite a proclaimed commitment to the European Union agenda, the State institutions made inadequate progress in relation to European Union reforms during the reporting period. The Bosnia and Herzegovina Council of Ministers adopted only six European Union reform laws,¹ and made limited progress in implementation of other European Union requirements,² while five of those laws adopted by the Council of Ministers were fully adopted by the Parliamentary Assembly³ and one failed because of opposition by delegates elected from the Republika Srpska.⁴

¹ The Council of Ministers adopted the Law on Framework for Foreign Exchange Policy in Bosnia and Herzegovina, the Law on Financial leasing, the Law on Execution of Criminal Sanctions, Detentions and Other Measures, the Law on Amendments to the Law on Police Officials, the Law on Amendments to the Law on Establishment of the Export-credit Agency of Bosnia and Herzegovina, Law on Competition, the Law on Amendments to the Public Procurement Law, the Law on Excise and the Anti-Discrimination Law.

² The Council of Ministers adopted a Decision appointing the Directors and Deputy Directors of three of the police agencies envisaged in the police reform laws; the Plan and Programme of education in European Union matters for staff of the Directorate for European Integration and other state institutions; Analysis of the degree of implementation of the Bosnia and Herzegovina strategy for fight against organized crime and corruption for the period 2006-2009; Decision on appointment of members for the Bosnia and Herzegovina Standardization Institute; Decision on appointment of the Director and Deputy Director of the Agency for pharmaceuticals and medical devices and members of the Expert Council of the Agency; Decision to start official preparations for a census; Strategy in the field of immigration and asylum and action plan for the period 2008-2011; State strategy for supervision over narcotics, prevention and combating of narcotics abuse in Bosnia and Herzegovina for the period 2009-2013; Strategy for Small and Medium-sized Enterprise Development; Decision on establishing the central harmonization unit of the Ministry of Finance and Treasury; and Decision establishing the Advisory Council for agriculture, nourishment and rural development of Bosnia and Herzegovina.

³ Law on Protection and Welfare of Animals, Law on Genetically Modified Organisms, Law on Execution of Criminal Sanctions, Detention and Other Measures, Law on Amendments to the Law on Police Officials and Law on Air Navigation.

⁴ Law on Agency for Development of Information Society.

20. The State and the entities continued to adopt legislation in an uncoordinated manner. Of particular concern was the lack of coordination on the part of the Republika Srpska in regard to the European integration process with the State-level and other authorities in the country. Republika Srpska obstruction of European Union requirements included the adoption of a draft Republika Srpska Law on State Aid in January in the first reading by the Republika Srpska National Assembly, although the Interim Agreement clearly provides that State aid shall be regulated only at the Bosnia and Herzegovina level.

21. As part of an overall programme for Western Balkan countries, the European Commission has provided Bosnia and Herzegovina with a road map for visa liberalization. The objective of the road map is to identify the requirements that Bosnia and Herzegovina must meet in order to allow the European Commission to make a proposal to the Council for the lifting of the visa obligation for Bosnia and Herzegovina. The road map for further liberalization beyond the existing visa facilitation and readmission agreement contains requirements in the fields of document security, illegal migration, public order and security and external relations.

22. During the reporting period, the European Commission in its Assessment report on the implementation of the road map for visa liberalization of November 2008 identified specific measures for Bosnia and Herzegovina to fulfil. In March, the European Commission provided for expert missions to carry out further assessments of Bosnia and Herzegovina activities in meeting the requirements of the road map.

23. Blockages in the adoption of State-level legislation also had a negative effect on the fulfilment of conditions set forth in the visa liberalization road map. In April, the European Commission addressed the Bosnia and Herzegovina Parliamentary Assembly, noting a number of outstanding issues and referring to six outstanding Bosnia and Herzegovina laws, as well as the implementation of police reform laws. Five of those laws have been blocked in parliament because of opposition from Republika Srpska parties, including the Laws on Border Control, Weapons, Transportation of Dangerous Materials, International Legal Aid, and Control of Movement of Weapons and Military Equipment.⁵

24. During the reporting period, Bosnia and Herzegovina authorities took steps to establish the new State-level police bodies provided for in the 2008 police reform laws.

25. In February, the Council of Ministers appointed the Directors and Deputy Directors of the Agency for Forensic Examinations and Expertise and the Agency for Police Support and the Deputy Director of the Agency for Education and Advanced Training of Personnel. The Council of Ministers also decided on the seats of the aforementioned agencies. The selection of the Director of the Agency for Education and Advanced Training will have to be repeated.

26. The establishment of the Independent Board and the Public Complaints Board failed late in March, owing to opposition from SNSD and SDS members in the Bosnia and Herzegovina House of Peoples, thus necessitating the repetition of the

⁵ With the exception of the last of these laws, which is still pending in the Bosnia and Herzegovina House of Peoples, these laws all failed in the Parliamentary Assembly.

appointment procedure for the members of those boards. The formation of the Independent Board is necessary for proceeding with the outstanding appointment of the Director and Deputy Directors of the Directorate for the Coordination of Police Bodies.

27. The legal deadline for the appointments to the new State-level police bodies mentioned above was August 2008.

28. In December, the Council of Ministers forwarded amendments to the Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina, and the Law on Police Officials of Bosnia and Herzegovina to the Bosnia and Herzegovina Parliamentary Assembly, and in March forwarded amendments to the Law on the State Investigation and Protection Agency and the Law on Border Police for parliamentary procedure, as required by the police reform laws. The legal deadline for the harmonization of the above-mentioned legislation with the police reform laws was November.

IV. Entrenching the rule of law

29. Further progress has been achieved during the reporting period towards entrenchment of the rule of law, which is the fifth of the five objectives set by the Peace Implementation Council Steering Board for transition from the Office of the High Representative to the European Union Special Representative. The Bosnia and Herzegovina Council of Ministers adopted the Bosnia and Herzegovina National War Crimes Strategy on 29 December and the implementation action plans of the National Justice Sector Reform Strategy were unanimously endorsed at a ministerial conference held in December.

30. The adoption of the Bosnia and Herzegovina National War Crimes Strategy on 29 December was a benchmark in the rule of law objective for transition from the Office of the High Representative to the European Union Special Representative, and with the adoption this benchmark was met. A strategy on war crimes was long overdue, particularly in view of the large number of domestic cases as well as the impending closure of International Tribunal for the former Yugoslavia. The Strategy sets criteria for the distribution of cases between the Bosnia and Herzegovina and entity judiciaries, reflects work done on cataloguing crime events, recognizes the need for resources and legislative amendments, stresses the importance of regional cooperation in war crimes investigations, and calls upon the authorities to urgently improve that cooperation. More recently, the implementation has experienced some delays. However, the necessary amendments to State legislation were adopted by the Council of Ministers, having now entered the parliamentary procedure, and the Supervisory Board to supervise the implementation of the Strategy has been established.

31. At a ministerial conference in December, action plans for the implementation of the Justice Sector Reform Strategy (2009-2013) were endorsed and a common declaration adopted. Implementation working groups were established in January. A second set of meetings of all working groups, at which the Office of the High Representative participates in the capacity of observer and adviser, is currently ongoing in order to prepare the next Ministerial Conference, when the Strategy will be revised and possibly updated. Regrettably, the implementation of the Strategy is hampered by the more than limited participation of the Republika Srpska Ministry

of Justice and by the weak contribution of the Federation Ministry of Justice. While the Bosnia and Herzegovina Ministry of Justice ensures that all sides are kept informed, the results achieved so far given the present level of cooperation remain low. The next ministerial conference, scheduled for the end of May in Banja Luka, should address these concerns.

32. All was not positive in the realm of the rule of law during the reporting period, which was characterized by attacks by political authorities to undermine the achievements of past reforms in the justice sector. Most notably in this respect the Republika Srpska authorities ignored a request from the State Investigation and Protection Agency to submit documentation concerning governmental building projects in relation to a pre-investigative action in alleged crimes involving the Republika Srpska Prime Minister. The Republika Srpska Prime Minister even publicly suggested the use of armed resistance in case of a forcible action to collect the requested documentation. In February, the attacks and challenges increased upon the submission of the Agency's report to the State Prosecutor's office alleging criminal activities in relation to the above-mentioned events in the Republika Srpska. An internal disciplinary process conducted in April has thus far determined that Agency personnel conducted the investigation in accordance to the relevant procedures.

33. Also of concern was a case submitted by a delegate of SNSD before the Bosnia and Herzegovina Constitutional Court challenging the Law on the Court of Bosnia and Herzegovina, the main purpose of which was to terminate the jurisdiction of the Court of Bosnia and Herzegovina for criminal offences prescribed by the entity criminal codes when such offences endanger the sovereignty of Bosnia and Herzegovina or have serious consequences beyond the territory of one entity. The Office of the High Representative submitted an *amicus curiae* brief to the Bosnia and Herzegovina Constitutional Court, and in March the Court issued a ruling confirming the constitutionality of the provision of the Law on the Court of Bosnia and Herzegovina that had been challenged. Regardless of the ruling, the member of political rhetorical attacks on State justice institutions remained high in the reporting period.

34. In the Federation, the authority of the High Judicial and Prosecutorial Council was challenged by a decision of the Federation President to appoint a judge to the Federation Constitutional Court in violation of the Federation Constitution and State law. The final authority for the appointment of judges to the Constitutional Court belongs to the House of Peoples of the Federation Parliament, and the President's choice for nomination of candidates is restricted by the role of the High Judicial and Prosecutorial Council in selecting and proposing the suitable candidates, as required by the Federation Constitution. The constitutional provision thus establishes balance between the request for independence of judges and their professionalism, and the power of the President to choose between the proposed candidates. The Federation President nominated a person who was excluded as a candidate by the High Judicial and Prosecutorial Council and stayed by her decision even after being prompted by the Council and the Committee of the Parliament about the breach of constitutional procedure. In the ensuing stalemate, the High Representative issued the legal opinion on the relevant constitutional provisions, as the High Representative initially enacted them in 2002. Even after the Constitutional Committee of the Federation House of Peoples had endorsed the legal opinion of the High Representative, the President insisted on her politically affiliated nominee.

Following the failure of vote in the House of Peoples in favour of the President's nominee, the High Judicial and Prosecutorial Council decided to republish the vacancy and reinstate the procedure.

35. The State prison construction project has continued to experience delays, thereby running the risk that some bilateral donations could be lost. The Bosnia and Herzegovina Ministry of Justice continues to oversee the project, including the ongoing technical review needed by the Council of Europe Development Bank before confirming its final approval for the loan.

V. Cooperation with the International Tribunal

36. According to the International Tribunal for the Former Yugoslavia, Bosnia and Herzegovina authorities have continued to grant access to Government archives and to provide requested documents. Moreover, authorities have also provided adequate responses to requests for assistance as well as facilitating the appearance of witnesses before the Tribunal.

37. The Office of the Prosecutor did however stress the necessity that Bosnia and Herzegovina law enforcement and judicial authorities take necessary measures against those who are engaged in helping the remaining fugitives evade justice or otherwise obstructing the effective implementation of the Tribunal's mandate.

38. Closely linked to cooperation with the Tribunal, the adoption by the Bosnia and Herzegovina Council of Ministers of the Bosnia and Herzegovina National War Crimes Strategy on 29 December is a positive outcome. The adoption of the Strategy was a benchmark in the rule of law objective for transition from the Office of the High Representative to the European Union Special Representative. A strong strategy on war crimes was long overdue, particularly in view of the huge Bosnia and Herzegovina domestic caseload as well as the impending closure of the Tribunal. The Strategy sets criteria for the distribution of cases between the Bosnia and Herzegovina and lower levels, reflects work done on cataloguing crime events, recognizes the need for resources and legislative amendments, stresses the importance of regional cooperation in war crimes investigations, and calls upon the authorities to urgently improve that cooperation.

39. During March, the (previous) High Representative used his executive powers to impose several amendments to Bosnia and Herzegovina and Federation laws, which prevented the early release of sentenced war criminals. The Tribunal had asked him to act upon this issue, and extended its gratitude for his timely action.

40. The arrest of Ratko Mladic and Goran Hadzic, the two remaining fugitive indictees, remains the Tribunal's priority. The Office of the High Representative will continue to support the activities of and cooperate with the Tribunal, NATO, EUFOR, the European Union, the Republika Srpska police, the Bosnia and Herzegovina Intelligence and Security Agency and other agencies involved in establishing their whereabouts and their arrest.

41. Two combined international-Bosnia and Herzegovina operations seeking information were conducted during the first quarter of 2009, both of them against members of the Mladic support network. One operation was against close relatives of Mladic located in the Republika Srpska municipality of eastern Sarajevo, and the

other against a former bodyguard and retired military associate who recently relocated to Banja Luka and is affiliated with a private security company.

42. The fact that convicted war criminal Radovan Stankovic remains at large, most likely in Serbia, is a continuing embarrassment to the region. Relevant Republika Srpska authorities have failed to hold a single person accountable for his escape, and have taken no action to encourage Serbian authorities to apprehend him, despite his having mailed threats from Serbia to Bosnia and Herzegovina prosecutors and judges. Stankovic escaped from the Republika Srpska prison in Foca in May 2007. Stankovic was the first case transferred by the Tribunal to the Court of Bosnia and Herzegovina, which convicted him of running a rape camp, among other crimes.

VI. Reforming the economy

43. Economic trends in the reporting period forecast serious challenges in 2009. While real GDP growth was 5.5 per cent in 2008,⁶ the impact of the global economic crisis on Bosnia and Herzegovina is likely to cause a sharp decrease in 2009. Driven by the rise in commodity prices and utilities, headline inflation reached 7.5 per cent⁶ at the end of 2008. This was slightly lower than in the summer when it was at its highest rate in the past 10 years. The trade deficit in 2008 amounted to KM 9.574 billion; exports increased by 13.1 per cent on an annual basis, thereby totalling KM 6.711 billion, and imports increased by 17.2 per cent and amounted to KM 16.286 billion.⁷ Mostly as a result of salary increases in the public sector, the average net wage in Bosnia and Herzegovina increased and amounted to around KM 800 at the end of 2008.⁷ The registered unemployment rate at the end of 2008 was 40.8 per cent⁷ and appeared to be rising. New employment has been in decline since November. A decline is visible in foreign direct investments too, which dropped from 11 per cent of GDP in 2007 to less than 6 per cent of GDP in 2008 and continues to have a downward tendency.⁸

44. As to the economic reform agenda, the reporting period has been characterized by a number of developments and challenges. The Governing Board of the Indirect Taxation Authority completed a few tasks from its portfolio, such as the preparation of the draft Law on Excise and the adoption of bylaws needed for the restructuring of the secretariat of the Authority's Governing Board and the set-up of a Final Consumption Unit. The allocation of indirect tax revenue between the entities remains a subject of dispute, however. Consequently, the Governing Board has been unable to agree on new revenue allocation coefficients since June 2008. This has been used by the Republika Srpska as a justification to question the overall indirect tax reform and the single account concept. The revenue allocation dispute has also undermined efforts to reappoint or replace the current Director of the Authority, whose mandate expired on 8 December.

45. Since its inauguration on 11 September 2008, the Bosnia and Herzegovina Fiscal Council has been meeting relatively regularly. While its decision of 6 November 2008 to set the upper limit for the budgets of the State, the entities and

⁶ Central Bank of Bosnia and Herzegovina.

⁷ Statistics Agency of Bosnia and Herzegovina.

⁸ Central Bank of Bosnia and Herzegovina.

the Breko District⁹ contributed to the relatively early adoption of the 2009 budgets at all levels,¹⁰ the Fiscal Council has so far contributed little to policy coordination among its members. Regardless of the challenges facing the country as a result of the global economic crisis the members of the Bosnia and Herzegovina Fiscal Council plan, adopt and implement measures independently of each other. Of particular concern is that this mechanism is being used by both entities to reach agreements that benefit the entities only. On 6 March, the Fiscal Council accepted a Protocol on Temporary Allocation of the Succession Funds, foreseeing that 65 per cent of the total of KM 180 million of the succession funds be given to the Federation and 35 per cent to the Republika Srpska. Although this allocation is considered to be of temporary nature and thus subject to modifications and consequent rebalancing once a new law on management of funds from succession is enacted at the State level, it is disturbing that the interests of the State and the Breko District were completely neglected.

46. Similar decisions are likely to continue until the financial crisis in the Federation, now also accompanied and accelerated by the effects of the global economic crisis, is properly addressed. The Federation Government has launched some initiatives to cover last year's deficit of KM 260 million and to financially cover all obligations in 2009, but it has so far lacked the capacity to take difficult decisions. The parties are already positioning themselves for the general elections of 2010 and do not seem to understand the full urgency of the situation. If action is not taken rapidly, there is a risk of eventual financial collapse and attendant social unrest and political instability. These risks are further exacerbated by the underperformance of revenues as a result of the global crisis, continued lack of agreement on revenue allocation coefficients, continued challenges to the State institutions by the Republika Srpska, expired mandates and delayed appointments.

47. In the business sphere, the reporting period was characterized by the continued opposition of the Republika Srpska to any reform requiring a transfer of competence, including the European partnership requirements such as the adoption of a State-level law on obligations and the set-up of a State-level banking supervision system.

48. Problems also continued in the energy sector, primarily with regard to the Bosnia and Herzegovina Electricity Transmission Company (Transco). Despite the entity Prime Ministers' Agreement on Energy Policy Principles of 6 November 2008 and the Transco Shareholders Assembly Agreement of 3 December 2008, whereby the parties agreed to urgent measures and activities required for the smooth operation of Transco, there were no improvements during the reporting period. Transco still does not function in full capacity and in accordance with the legislation in force due to the continuing boycott by the Republika Srpska of Management

⁹ The 6 November 2008 decision of the Fiscal Council allowed a 12 per cent increase of the State and a 6 per cent increase of the entity and Breko District 2009 budgets compared to their 2008 budgets.

¹⁰ The State budget was adopted on 29 January 2009 in the amount of KM 1.41 billion, which is an increase of 19 per cent compared to the 2008 adopted budget; the Federation budget was adopted on 29/30 December 2008 in the amount of KM 1.6 billion, which is a decrease by KM 233 million or 13 per cent compared to the 2008 rebalanced budget; and the Republika Srpska budget was adopted on 22/23 December 2008 in the amount of KM 1.67, which is a 6 per cent increase compared to the 2008 rebalanced budget or an 11 per cent increase compared to the 2008 adopted budget.

Board meetings and the General Manager's continued obstruction of the Board's earlier decisions. This also affects the reappointment or replacement of the key Executive Directors of Transco, whose mandates expired on 1 March. The Prime Minister and the Energy Minister of the Republika Srpska opposed all attempts to change this situation and also rejected the international community's offer of assistance in overcoming the problems and improving the company's performance. The situation rapidly becomes detrimental for the only electricity transmission company in Bosnia and Herzegovina and may lead to its dissolution. This would represent a rollback on the reform that was one of the preconditions for negotiating the signing of a Stabilization and Association Agreement, which is required under the Athens Energy Community Treaty and was implemented with significant international financial support.

VII. Public administration reform

49. During this reporting period, the High Representative was forced to express his concerns about amendments to the State law on the civil service on several occasions because of their potential to reverse longstanding efforts to put in place a merit-based, politically independent civil service, as well as to undermine the State-level Civil Service Agency. Although adopted by the Council of Ministers, a further intervention in February by the Principal Deputy High Representative Acting High Representative had the desired effect and the parliamentary committee discussing the amendments made the changes necessary to safeguard the core principles underlying the existing civil service system. The amendments were adopted by the Bosnia and Herzegovina Parliamentary Assembly at the end of April in a satisfactory form.

VIII. Defence reform

50. During the reporting period Bosnia and Herzegovina instituted capacity-building of its defence planning process, although, within the defence budget, allocation of funds to personnel costs remained high, at the expense of capital costs. There was no evidence of ethnic tension hampering reforms or operational capability within the armed forces of Bosnia and Herzegovina.

51. NATO conducted assessments to determine defence reform progress in Bosnia and Herzegovina within the Individual Partnership Action Plan and the Planning and Review Process, two activities within the Partnership for Peace Programme. Concerning the Individual Partnership Action Plan, NATO held discussions with officials from Bosnia and Herzegovina ministries in February, revealing a reasonable degree of progress on many issues. This was especially the case at the technical level where ministries and their staff were empowered to engage on particular issues. However, there appeared to be some delays in the implementation of issues that were either sensitive or politicized by Bosnia and Herzegovina institutions or entities. An official report on progress was discussed by the NATO North Atlantic Council, together with the Bosnia and Herzegovina Minister for Foreign Affairs and Minister of Defence on 11 March.

52. With regard to the Planning and Review Process, NATO held discussions with the Bosnia and Herzegovina Ministry of Defence and the armed forces of Bosnia

and Herzegovina during February. Discussions showed that some progress had been made within the implementation of the Planning and Review Process Partnership goals. However, the failure to resolve the issues of movable and immovable property (the second of the five objectives and two conditions for the transition from the Office of the High Representative to the European Union Special Representative) and the lack of financial resources remained significant obstacles to progress. The NATO Political-Military Steering Committee, together with a team from Bosnia and Herzegovina, discussed the final draft of the Planning and Review Process assessment on 2 March.

IX. Intelligence reform

53. Amid ongoing political tension in Bosnia and Herzegovina, the Intelligence and Security Agency continued its ongoing efforts to consolidate its work and functioning. Training in operational techniques and methods were stepped up with support from the Agency's international partners. Likewise, work on the internal standardization and regulation of the lawful intercept system progressed.

54. The Bosnia and Herzegovina parliamentary committee that oversees the Intelligence and Security Agency continued its practice of inspections of regional centres. On 10 February, amendments to the Law on the Intelligence and Security Agency and amendments to the Law on Protection of Secret Data came into force. The former enhanced planning and reporting obligations between the Agency and the State's executive and parliamentary bodies. The amendments to the Law on Protection of Secret Data broadened the scope of data protection in Bosnia and Herzegovina with regulations on industrial security, which are also in line with NATO standards.

X. European Union military mission in Bosnia and Herzegovina

55. After its United Nations mandate was extended on 20 November 2008 for another 12 months, the European Union continued to provide a military presence in Bosnia and Herzegovina with a force of approximately 2,200 troops. EUFOR was based in Sarajevo with a headquarters, a multinational battalion and the integrated police unit together with other assets. EUFOR continued to have liaison and observation teams based in the local communities throughout the country.

56. In a politically fragile and brittle environment, EUFOR continued to play an important role in contributing to the safe and secure environment, which was not threatened during the reporting period. Local law enforcement agencies proved able to deal with all public unrest issues during the period.

57. EUFOR continued to monitor and advise on Joint Military Affairs tasks that have been handed over to the Bosnia and Herzegovina authorities. This will remain a requirement for some time. The handover of the only Joint Military Affairs task that remained with EUFOR — civilian movement control — was stuck in the process of parliamentary adoption: the requisite legislation was again rejected in April owing to a lack of support from delegates elected from the Republika Srpska.

58. EUFOR, within its means and capabilities, continued to provide essential support to the International Tribunal, especially through its operations against support networks of persons indicted for war crimes.

XI. Return of refugees and displaced persons

59. The Council of Ministers of Bosnia and Herzegovina adopted the strategy for implementation of annex 7 on 29 January. The document focuses on the return of displaced persons and refugees to their homes of origin, primarily through reconstruction of dwellings. It also addresses the integration of displaced persons who cannot return as well as the issue of compensation for property that cannot be restored to the owners. The strategy further discusses a range of topics related to the sustainability of return, and proposes measures to address obstacles in those areas. However, the parliament has failed to adopt the Strategy thus far. The Serb representatives insist that the strategy be amended to provide greater emphasis on assisting people who wish to remain in the current place of residence. Yet the Bosniak representatives wish to ensure that State financing for annex 7 will be reserved to support returns almost exclusively. The draft strategy does provide for access to all rights stipulated in annex 7, and can be further elaborated on once the document has been adopted. We have repeatedly called upon parliament to adopt the strategy. The current political stalemate over this issue results only in an unnecessary delay in helping the more than 100,000 displaced people in Bosnia and Herzegovina, thousands of them still in collective centres, to find a durable solution.

XII. Mostar

60. The Mostar City Council has so far failed to elect a new mayor in accordance with the requirements of the statute of the City of Mostar, because of a power struggle between the Bosniak-dominated SDA and the Croat-dominated HDZ, each of whom covet the mayor's position, with the numerically significant Narodna Stranka — Radom za Boljitak (People's Party — Work for Prosperity) in the middle. There have been no serious political negotiations despite repeated efforts by the Office of the High Representative urging the parties to do so. As a result, numerous rounds of mayoral voting have repeatedly yielded the same negative results.

61. The Croat prefix parties, particularly HDZ, have used the situation to attack the Mostar statute, which calls into question their commitment to the unification process.

62. The failure to elect a mayor means that the city risks financial collapse, since there is no annual budget, and the city's temporary financing decision expired on 31 March. It is the mayor's responsibility to propose the draft budget, but there is no new mayor to do so. While the former mayor still occupies the position until a new mayor is elected, and could propose a budget, the City Council would reject any such proposal under the current circumstances.

63. The impasse not only delays the key goal of adoption of the Mostar statute by the City Council, but also raises questions about the sustainability of a unified Mostar in the absence of the persistent engagement of the international community.

64. Meanwhile, the government of Herzegovina-Neretva Canton, based in Mostar, has been hit by the global economic crisis. A shortfall in revenues has forced the government to propose a 15 per cent salary cut for all budgetary beneficiaries, which include police, medical workers, teachers and civil servants. In response, the trade unions have threatened general strikes, which could bring normal life in the canton to a standstill.

XIII. Brcko District

65. Brcko District has seen two welcome albeit long overdue developments during the reporting period: first the adoption by the Bosnia and Herzegovina Parliamentary Assembly, by an overwhelming majority, of an amendment to the Bosnia and Herzegovina Constitution giving the District access to the Bosnia and Herzegovina Constitutional Court, and secondly the formation of a new concentration government, representing all political parties and constituent peoples. As a result of these positive developments the Brcko District is nearing the point where closure of the supervisory regime is possible.

66. Intensive talks and consultations were undertaken after the Prud leaders meeting and the November meeting of the Peace Implementation Council Steering Board to secure an agreement on a constitutional amendment giving the Brcko District access to the Bosnia and Herzegovina Constitutional Court; the Supervisor, the Office of the High Representative and the United States played a key role in bringing the parties together. On 25 February, the Republika Srpska National Assembly adopted a conclusion on supporting the constitutional amendments in a significant departure from its decision of March 1999, by which it rejected the Final Award. The Council of Ministers adopted the amendment early in February and the Bosnia and Herzegovina Parliamentary Assembly followed suit on 26 March. The amendment came into effect on 5 April.

67. The Brcko District Supervisor had made clear before the elections of October 2008 that it would be essential for all members of the newly elected Government to expressly commit themselves to the Dayton Peace Agreement, to continue to recognize the Awards of the Arbitral Tribunal and the status of the District as a democratic, multi-ethnic unit of self-governance under the sovereignty of the State, and to clearly commit themselves to continue to protect the status of the District after the supervisory regime ends. The political constellation after the election results was such that no party came close to securing a majority and so a "concentration government", including all parties in the Assembly, emerged as the only realistic option. It was only on 11 February that the Assembly elected the Speaker (Bosniak), the Deputy Speaker (Croat) and the Serb Mayor. Members of the Government were sworn in on 26 March.

XIV. Bosnia and Herzegovina and the region

68. Despite the occasional spat and niggling border issues, regional relations have been relatively quiet during the reporting period, although the Serbian Foreign Minister's comments at the end of April suggesting Bosnia and Herzegovina was a "protectorate" elicited a strongly worded response from a member of the Bosnia and Herzegovina Presidency, Haris Silajdzic. Federation-based politicians raised their voice against arrest warrants supposedly issued in March by a court in Belgrade

against 13 (or more) past and present Bosnia and Herzegovina officials allegedly implicated in an attack on a Yugoslav People's Army column withdrawing from Sarajevo in May 1992. At the time of writing, however, no such warrants had actually appeared. Given both the former rule of the Tribunal that war crimes cases should be tried in the successor republic in which the putative offence was committed and the fact that a former city official in Tuzla is currently being tried in Belgrade in an analogous case, Bosnia and Herzegovina judges and prosecutors are very sensitive about losing what they regard as their rightful jurisdiction.

69. There was one potentially significant development in a long-running but low-level dispute with Croatia over that country's construction of a bridge from the Dalmatian mainland to the Peljesac peninsula. The Bosnia and Herzegovina view is that such a bridge might block access to the open sea for Bosnia and Herzegovina's potential port of Neum, would allow road traffic to bypass the country's short stretch of coast, and possibly jeopardize its claim on two tiny islands in the adjoining bay. The Bosnia and Herzegovina Presidency wrote officially to the Government of Croatia in mid-April proposing talks on the issue, failing which Bosnia and Herzegovina would seek redress in international courts.

70. The upper house of the Bosnia and Herzegovina Parliamentary Assembly voted late in April for a bill that would reintroduce Customs tariffs on agricultural produce from Croatia and Serbia contrary to obligations under the Central European Free Trade Agreement. On the other hand, some positive excitement was generated during the period by talks with Montenegro on a joint project to link the two countries' railway networks. This would involve the construction of a 150-km line from Capljina to Niksic.

XV. European Union Police Mission

71. In line with its "strategic objectives for 2009", the European Union Police Mission continued to concentrate its efforts on supporting the fight against organized crime and assisted in coordinating the policing aspects of efforts to combat major and organized crime. Furthermore, the Mission, in coordination with the Office of the High Representative and the European Union Special Representative, continued to monitor and assess the implementation of the police reform legislation adopted on 16 April 2008. The Mission and the Office of the High Representative/European Union Special Representative worked on efforts to harmonize entity, cantonal and Brčko District police legislation and developed proposals on reforming State-level legislation covering the State Investigation and Protection Agency and the Border Police.

XVI. Non-certification of police officers

72. During the reporting period, the Republika Srpska has remained the only jurisdiction in Bosnia and Herzegovina that has yet to implement the provisions of the letter of April 2007 from the President of the Security Council on persons denied certification by the International Police Task Force. In December, associations of persons denied certification by the International Police Task Force staged a peaceful protest in front of the Office of the High Representative/European Union Special Representative building in Sarajevo.

XVII. Media development

73. A deterioration of media freedoms in Bosnia and Herzegovina has been registered during the reporting period. Since January, the Free Media Helpline of the Bosnia and Herzegovina Union of Journalists has registered 16 verbal assaults and direct physical attacks, death threats and other violations of journalists' rights. This represents an increase of 20 per cent compared to 2008. It also became evident during the period that the little cooperation that existed between local media organizations responsible for media freedoms has diminished. On 29 April the RTRS, the Republika Srpska public broadcaster and the Republika Srpska daily newspaper *Glas Srpski* walked out of the association BH Journalists, announcing the establishment of a separate Republika Srpska only association of journalists.

74. Almost 12 months after the (long delayed) adoption of the Federation law on the public broadcasting system, the Federation parliament has still not appointed the Board of Governors of Federation Radiotelevision. The main reason for this is a lack of political consensus and an attempt by the parliament to take an excessively large role in their appointment. Without the Federation Board, the registration of the Bosnia and Herzegovina Public Broadcasting Corporation, responsible for streamlining and modernizing the activities of all three public broadcasters in the system, continues to be on hold.

75. The Council of Ministers was supposed to shortlist candidates for the new Council of the Communications Regulatory Agency and present the list to the Bosnia and Herzegovina parliament for it to make the necessary appointments. Despite the fact that the mandate of the current Council expired on 25 April, and despite having received the candidate list from the Agency on time, the Council of Ministers has yet to put this item on its agenda. Together with the failure of the Council of Ministers to appoint a new General Director of the Communications Regulatory Agency, unresolved since October 2007, the Council of Ministers is seriously undermining the independence, overall performance and ability to function of the Agency.

XVIII. European Union Special Representative

76. In close cooperation and coordination with the European Union, the European Union Special Representative continued his efforts to facilitate the efforts of Bosnia and Herzegovina to meet requirements for European Union membership. Beyond seeking to facilitate the adoption of individual requirements set forth in the European Partnership and the Stabilization and Association Agreement, the European Union Special Representative has also engaged in efforts to increase public and sectoral support within Bosnia and Herzegovina for European Union accession. With this in mind, the European Union Special Representative continued his outreach programme after the municipal elections of October 2008, involving parliamentarians, media, civil society and non-governmental organizations, social partners and youth representatives.

77. The "Parliament for Europe" project of the European Union Special Representative has brought together European Union representatives with Members of Parliament from the State, entity and Brčko District assemblies with the objective of informing key Bosnia and Herzegovina actors about European Union

requirements and standards, and to encourage them to work towards meeting them. Each of the five sessions held thus far has focused on a different topic, such as the role of parliament in European Union accession, public administration reform, human rights and the protection of minorities, the fight against corruption, and the European Union internal market.

78. The European Union Special Representative is cooperating closely with public broadcasters in Bosnia and Herzegovina to increase and improve coverage of European Union issues in the media. Through this initiative the public broadcasters have increased news reports on the impact of the Stabilization and Association process and eventual European Union membership on citizens of Bosnia and Herzegovina. The reports are broadcast in the prime-time news bulletins and talk shows. The core group of journalists engaged on this project increase their knowledge and understanding of European Union issues, turning them into future European Union correspondents.

79. The European Union Special Representative publishes a weekly electronic newsletter summarizing news from the European Union and on the relations of Bosnia and Herzegovina with the European Union, which is distributed every Saturday to the media, government bodies, civil society actors and individual subscribers. The newsletter fills an important gap in the media landscape in Bosnia and Herzegovina. The European Union Special Representative's website www.reci.ba ("reci" means "say it") has also developed into an important communication tool. Through the website, the European Union Special Representative has personally engaged in a dialogue with citizens, recording 165 answers to questions from citizens. Some of the replies have been taken up by the media as news items. In its first year, the site has received some 65,000 visits, with more than 7,000 comments submitted by citizens.

80. The European Union Special Representative continued to encourage a genuine public dialogue on the European Union by helping non-governmental organizations nurture European Union sentiment and activities, including monitoring implementation of the Stabilization and Association Agreement and the European Partnership priorities. The Special Representative has also been the patron of two regional conferences, on non-governmental organizations and young people, respectively, and taken part in a conference on the role of local governments and communities in the European Union integration process. In addition, the Special Representative has supported Mostar's two student unions in organizing an unprecedented joint debate on Bosnia and Herzegovina's European Union perspective, with the participation of students from both universities in Mostar.

XIX. Future of the Office of the High Representative

81. The Peace Implementation Council Steering Board met twice during the reporting period, first on 20 November 2008 and then again on 26 March 2009 to review the situation in Bosnia and Herzegovina. It recognized the progress that had been made by the authorities in Bosnia and Herzegovina to deliver the objectives and conditions for the transition from the Office of the High Representative to the European Union Special Representative. However, it also made clear that it had serious concerns about the prevailing political situation in the country, including the

challenges to the country's sovereignty, territorial integrity and constitutional order, as well as to its State-level institutions.

XX. Reporting schedule

82. In keeping with the proposals of my predecessor to submit regular reports for onward transmission to the Security Council, as required by Security Council resolution 1031 (1995), I herewith present my first regular report. Should the Secretary-General or any Security Council member require information at any other time, I should be pleased to provide an additional written update.



Security Council

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Letter dated 13 May 2009 from the Secretary-General addressed to the President of the Security Council

Pursuant to Security Council resolution 1031 (1995), I have the honour to convey the attached letter dated 8 May 2009, which I received from the High Representative for Bosnia and Herzegovina (see annex), transmitting the thirty-fifth report on the implementation of the Peace Agreement, covering the period from 1 November 2008 to 30 April 2009.

I should be grateful if you would bring the attached letter to the attention of the members of the Security Council.

(Signed) **Ban Ki-moon**

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Annex

Letter dated 8 May 2009 from the High Representative for Bosnia and Herzegovina and European Union Special Representative addressed to the Secretary-General

Pursuant to Security Council resolution 1031 (1995), by which the Council requested the Secretary-General to submit to it reports from the High Representative in accordance with annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Conclusions of the London Peace Implementation Conference of 8 and 9 December 1995, I herewith present to you the thirty-fifth report (see enclosure). I would ask you kindly to distribute this report to the members of the Security Council for their consideration.

This is my first report to the Secretary-General since assuming the office of the High Representative for Bosnia and Herzegovina (and European Union Special Representative) on 26 March 2009. The present report covers the period from 1 November 2008 to 30 April 2009.

Should you or any Council member require any information beyond what is offered in the attached report or have any questions regarding its contents, I should be pleased to provide further information.

(Signed) Valentin Inzko

Enclosure**Thirty-fifth report of the High Representative for Bosnia and Herzegovina****1 November 2008-30 April 2009***Summary*

This report covers the period from 1 November 2008 to 30 April 2009. During the past six months Bosnia and Herzegovina has made limited progress on its reform agenda. Nationalist, anti-Dayton rhetoric challenging the sovereignty, territorial integrity and constitutional order of Bosnia and Herzegovina has played the dominant role, despite an effort by three political leaders to open a process of dialogue and compromise. Challenges to the authority of the High Representative and the Steering Board of the Peace Implementation Council have continued to occur. Of particular note are the ongoing attacks by the Government of the Republika Srpska against State institutions, competencies and laws.

Some progress has been made towards meeting the requirements set by the Steering Board for transition from Office of the High Representative to the European Union Special Representative, most notably the adoption of a constitutional amendment incorporating the Brčko District into the Bosnia and Herzegovina constitution and ensuring its access to the constitutional court. Bosnia and Herzegovina also adopted a War Crimes Strategy and endorsed the implementation action plans of the National Justice Sector Reform Strategy.

The European Union military mission in Bosnia and Herzegovina (EUFOR) continues to contribute to a safe and secure environment in Bosnia and Herzegovina. EUFOR is a key reassurance factor in Bosnia and Herzegovina at a time when the political situation remains fragile.

I. Introduction

1. This is my first report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina (as well as that of European Union Special Representative to Bosnia and Herzegovina) on 26 March. In keeping with past practice, the present report assesses progress made towards attaining the goals outlined in previous reports, reviews developments during the reporting period, and provides my assessment of mandate implementation in the most important areas. Considering the decision of the Steering Board of the Peace Implementation Council in February 2008 specifying five objectives and two conditions that must be met by the authorities of Bosnia and Herzegovina before transition from the Office of the High Representative to the European Union Special Representative can be concluded, I have focused my efforts on facilitating progress in these areas. Nevertheless, my time has also been dedicated to addressing negative developments, in particular anti-Dayton rhetoric challenging the sovereignty, territorial integrity, and constitutional order of the country, as well as related attacks on the State institutions of Bosnia and Herzegovina.

II. Political update

General political environment

2. In the lead-up to the November meeting of the Peace Implementation Council Steering Board, the leader of SNSD, Milorad Dodik, the leader of SDA, Sulejman Tihić, and the leader of HDZ, Dragan Čović, signed the so-called Prud Agreement, addressing constitutional reform, resolution of the State property objective for transition from the Office of the High Representative to the European Union Special Representative, implementation of annex 7 in connection with the organizing of a census, a constitutional solution for Brčko's access to the Bosnia and Herzegovina Constitutional Court, and Bosnia and Herzegovina Fiscal Council and budget issues. The agreement, as well as subsequent meetings of the three leaders over the following months, reflected their apparent willingness to compromise on and make progress towards important political issues, including the remaining objectives and condition for transition from the Office of the High Representative to the European Union Special Representative.

3. On the positive side, those discussions contributed to ensuring the passage of the 2009 State budget in January and agreement among the political leaders on an amendment to the Constitution of Bosnia and Herzegovina ensuring the Brčko District access to the Bosnia and Herzegovina Constitutional Court. On 26 March, the Bosnia and Herzegovina Parliamentary Assembly adopted the Brčko amendment, the first change to the Constitution since the Dayton Agreement was signed, with the support of the vast majority of the parties in parliament.

4. Despite these positive achievements, divisive and nationalist rhetoric challenging the sovereignty and constitutional order of Bosnia and Herzegovina continued during the reporting period, along with actions and statements by Bosnia and Herzegovina actors challenging the authority of the High Representative and the Peace Implementation Council Steering Board. Ill-advised discussions on the future territorial organization of the country as part of initial constitutional reform consultations led to all sides falling back to their maximalist positions and in some

cases going beyond what they had previously called for. This further limited the room for compromise. In a number of areas, attempts to roll back previous reforms and undermine existing State-level institutions continued.

5. During the reporting period, Republika Srpska officials and institutions took steps and issued statements furthering the idea of eventual secession of the Republika Srpska from Bosnia and Herzegovina. These steps included an official Republika Srpska platform for constitutional change, foreseeing Bosnia and Herzegovina as a "union of independent States" and alluding to the possibility of citizens of the entity being consulted on the "State structure" or "constitutional status" of the Republika Srpska. In February, the SNSD party of Milorad Dodik adopted conclusions calling for discussions on the possibility for the citizens to "express their will" on whether they "are for the existence of the Republika Srpska within the Dayton territorial and political framework". In the same month, the President of SNSD presented his party's proposal for constitutional reform in the media. The platform was based on a number of "ultimatums", which included the right to hold a referendum on the independence of the Republika Srpska within three years. In April, Dodik expressed the opinion to Radio Free Europe that someday the conditions would be right for the Republika Srpska to follow Kosovo's lead and secede from Bosnia and Herzegovina.

6. The political situation was further complicated by authorities of the Republika Srpska and ruling Republika Srpska parties challenging the legality and validity of decisions of the High Representative. These moves included a letter sent by the Government of the Republika Srpska in February 2009, bypassing State institutions, to the Security Council, stating that "... there is no legal basis for the continued exercise of these peremptory powers; moreover their use has violated the Bosnia and Herzegovina Constitution, the Dayton Accords, other international treaties, and general principles of international law". At a session of the Republika Srpska National Assembly in April, in yet another attempt to divert attention from concrete political issues and reforms, Prime Minister Dodik claimed that "the stability of Bosnia and Herzegovina is most endangered by the long-term and illegal activity of the Office of the High Representative" and repeated the assertion that decisions, acts and removals by the Office of the High Representative had no basis in the Dayton Peace Agreement or under international law. These steps were taken despite a clear reminder of the Peace Implementation Council Steering Board in November and then again in March to the parties to meet their obligations and ensure full cooperation with the High Representative.

7. Developments in an ongoing investigation by the Bosnia and Herzegovina State Prosecutor and State Investigation and Protection Agency into alleged criminal offences of the Republika Srpska Prime Minister, Milorad Dodik, and others prompted a visceral political response from Republika Srpska officials and representatives from the Republika Srpska within State institutions, including threats of unilateral withdrawal from Bosnia and Herzegovina State institutions. These unacceptable reactions were prompted by the submission of an investigation report from the State Investigation and Protection Agency to the prosecutor and no formal charges have been raised.

8. These developments reduced the space for significant progress on the legislative agenda, including reforms required for further progress towards the European Union, visa liberalization, and agreed reforms stemming from the Prud

Agreement. The Prud process highlighted divisions within Bosniak politics both between SDA and the Party for Bosnia and Herzegovina, as well as divisions within SDA. In December, the President of SDA, Sulejman Tihic, delivered a speech calling for a shift in Bosniak politics, away from a philosophy of victimhood and towards practical engagement with representatives of the other two constituent peoples, in order to facilitate the compromises needed to move the country forward. Through his ongoing support for the Prud process, Tihic exposed himself to attacks from within and outside his party. In March and April, Bakir Izetbegovic, son of SDA founder Alija Izetbegovic, and Adnan Terzic, former Chair of the Council of Ministers, announced that they would challenge Tihic in the race for the post of SDA President, which will be decided at the party congress late in May.

9. Beyond the ongoing political tension, the global economic crisis accelerated the already difficult economic situation in the country. The Federation has been hardest hit, because of its bloated administrative apparatus and unrealistic social benefit commitments, especially towards the veteran population, bringing it close to economic collapse. In March, the Government was forced to take several million KM in commercial loans from a number of private banks. Media speculation about the imminent financial collapse of the Federation was accompanied by repeated reports of an impending vote of no confidence in the Government. In April, the Prime Minister of the Federation, Nedžad Brankovic, of SDA, was indicted for abuse of office by the Sarajevo Cantonal Court, leading for calls for his resignation, including from his own party president. The President of HDZ, Dragan Covic, was also indicted in April.

10. Political engagement between Tihic and Covic at the national level did not translate into agreement between the two largest Bosniak and Croat parties on the election of a new mayor in Mostar. At the end of the reporting period, six months after the 2008 municipal elections, Mostar still had no mayor. With ongoing constitutional reform discussions and media speculations about possible future changes to the organization of Bosnia and Herzegovina and the Federation, the continuing failure of the parties in Mostar to reach agreement is having a negative impact on the situation in the city.

11. In April, an initial breakthrough was achieved in attempts at finding an acceptable and sustainable resolution of the State property apportionment issue, whereby each level of government would receive the property needed to carry out its competencies. An acceptable and sustainable resolution of State property is the second of the five objectives set by the Peace Implementation Council Steering Board for transition from the Office of the High Representative to the European Union Special Representative. The breakthrough came when the Council of Ministers finally took steps to initiate an inventory of State property, following months of pressure from the international community.

12. As previously noted, the Prud Agreement of November and subsequent meetings addressed the issues of constitutional reform. Discussions in November and December initiated a process of discussing such reform through the Bosnia and Herzegovina Parliamentary Assembly, with the three party presidents signing and forwarding to the parliament an Initiative for Changes of the Constitution of Bosnia and Herzegovina which proposed, inter alia, that their parties' caucuses, together with other delegates, should prepare a draft decision on the commencement of reform talks for each house to endorse.

13. Despite these initial positive first steps, the third meeting of the Prud leaders in Banja Luka in January exposed deep divisions between the leaders in their visions of the future organization of the country. The leaders agreed to reorganize Bosnia and Herzegovina on the basis of four territorial units forming the "middle level" of government, but soon revealed in the media wholly contradictory understandings of what this formulation would mean in practice. The Banja Luka agreement provoked a heated public debate and raised political tensions, setting back discussions on constitutional reform. When the Prud leaders reconvened in the middle of February in Mostar to exchange their respective platforms on constitutional reform, the SNSD President served his colleagues with a series of ultimatums and the talks broke down. In addition, conclusions adopted by the Republika Srpska National Assembly in mid-February demonstrated a lack of readiness to accept constitutional changes that would boost the authority and effectiveness of State institutions and enhance the capacity of Bosnia and Herzegovina to take part in Euro-Atlantic integration.

14. Actions by Republika Srpska parties and institutions on constitutional reform should also be viewed in the light of disingenuous claims in the media that the State of Bosnia and Herzegovina has usurped responsibilities belonging to the entities. After repeated official requests by the Office of the High Representative since August for the Republika Srpska authorities to provide a list of competencies alleged by Republika Srpska representatives in the media to have been illegitimately transferred to the Bosnia and Herzegovina State, the Office of the High Representative received a list of 64 items in February. This list was expanded to 68 alleged items and adopted as an "information" by the Republika Srpska Government and sent to the Republika Srpska National Assembly, which is still debating the document.

15. The Republika Srpska list includes a number of responsibilities that are expressly listed in the Constitution as belonging to Bosnia and Herzegovina (including matters related to immigration and asylum, import and export of arms, and international and inter-entity criminal law enforcement). Certain matters listed have already been subject to challenges before the Constitutional Court of Bosnia and Herzegovina, which has decided that Bosnia and Herzegovina-level legislation covering those matters is in line with the distribution of competencies provided for in the Constitution. The list is also misleading in that it alleges that there have been transfers of competency in areas where Bosnia and Herzegovina-level legislation is being discussed but has not been adopted owing to various types of blockades by delegates elected from the Republika Srpska. A number of these are matters that must be adopted at the Bosnia and Herzegovina level in order to implement the Stabilization and Association Agreement or comply with the European Partnership document.

16. In fact, the entities have agreed to transfer certain constitutional responsibilities to the State on only four occasions, and have done so as provided for in the Constitution. SNSD and the Republika Srpska authorities in general appear determined to limit significant constitutional reform while, at the same time, seeking to expand Republika Srpska competencies through false claims that the State has illegitimately usurped entity prerogatives.

17. Despite these setbacks, the SDA President and Deputy Speaker of the Bosnia and Herzegovina House of Peoples, Sulejman Tihic, succeeded in getting a

conclusion adopted in that house to initiate parliamentary discussions on constitutional reform. Although the delegates of SNSD voted in favour, that party's leaders in the House of Representatives repudiated the decision of their colleagues in the upper house as inimical to Republika Srpska interests. Overall, SDA and HDZ remain determined to stick to what was agreed (or supposedly agreed) during the Prud process, while SNSD is inclined to backtrack and to shelter behind the demand that the Republika Srpska National Assembly must have primacy in any discussions of constitutional reform.

18. One lesson of the failed "April Package" in 2006 is that negotiations on constitutional reform should not extend into an election year, when nationalistic rhetoric is likely to increase, room for compromise is reduced, and the risk of failure — and collateral damage to the political situation — is great. Since 2010 is another election year, time in 2009 to deliver meaningful constitutional changes, which the country will undoubtedly need, would be limited. In addition, any eventual constitutional amendments would almost certainly affect election rules and require subsequent changes to the election law.

III. European partnership requirements and visa liberalization

19. Despite a proclaimed commitment to the European Union agenda, the State institutions made inadequate progress in relation to European Union reforms during the reporting period. The Bosnia and Herzegovina Council of Ministers adopted only six European Union reform laws,¹ and made limited progress in implementation of other European Union requirements,² while five of those laws adopted by the Council of Ministers were fully adopted by the Parliamentary Assembly³ and one failed because of opposition by delegates elected from the Republika Srpska.⁴

¹ The Council of Ministers adopted the Law on Framework for Foreign Exchange Policy in Bosnia and Herzegovina, the Law on Financial leasing, the Law on Execution of Criminal Sanctions, Detentions and Other Measures, the Law on Amendments to the Law on Police Officials, the Law on Amendments to the Law on Establishment of the Export-credit Agency of Bosnia and Herzegovina, Law on Competition, the Law on Amendments to the Public Procurement Law, the Law on Excise and the Anti-Discrimination Law.

² The Council of Ministers adopted a Decision appointing the Directors and Deputy Directors of three of the police agencies envisaged in the police reform laws; the Plan and Programme of education in European Union matters for staff of the Directorate for European Integration and other state institutions; Analysis of the degree of implementation of the Bosnia and Herzegovina strategy for fight against organized crime and corruption for the period 2006-2009; Decision on appointment of members for the Bosnia and Herzegovina Standardization Institute; Decision on appointment of the Director and Deputy Director of the Agency for pharmaceuticals and medical devices and members of the Expert Council of the Agency; Decision to start official preparations for a census; Strategy in the field of immigration and asylum and action plan for the period 2008-2011; State strategy for supervision over narcotics, prevention and combating of narcotics abuse in Bosnia and Herzegovina for the period 2009-2013; Strategy for Small and Medium-sized Enterprise Development; Decision on establishing the central harmonization unit of the Ministry of Finance and Treasury; and Decision establishing the Advisory Council for agriculture, nourishment and rural development of Bosnia and Herzegovina.

³ Law on Protection and Welfare of Animals, Law on Genetically Modified Organisms, Law on Execution of Criminal Sanctions, Detention and Other Measures, Law on Amendments to the Law on Police Officials and Law on Air Navigation.

⁴ Law on Agency for Development of Information Society.

20. The State and the entities continued to adopt legislation in an uncoordinated manner. Of particular concern was the lack of coordination on the part of the Republika Srpska in regard to the European integration process with the State-level and other authorities in the country. Republika Srpska obstruction of European Union requirements included the adoption of a draft Republika Srpska Law on State Aid in January in the first reading by the Republika Srpska National Assembly, although the Interim Agreement clearly provides that State aid shall be regulated only at the Bosnia and Herzegovina level.

21. As part of an overall programme for Western Balkan countries, the European Commission has provided Bosnia and Herzegovina with a road map for visa liberalization. The objective of the road map is to identify the requirements that Bosnia and Herzegovina must meet in order to allow the European Commission to make a proposal to the Council for the lifting of the visa obligation for Bosnia and Herzegovina. The road map for further liberalization beyond the existing visa facilitation and readmission agreement contains requirements in the fields of document security, illegal migration, public order and security and external relations.

22. During the reporting period, the European Commission in its Assessment report on the implementation of the road map for visa liberalization of November 2008 identified specific measures for Bosnia and Herzegovina to fulfil. In March, the European Commission provided for expert missions to carry out further assessments of Bosnia and Herzegovina activities in meeting the requirements of the road map.

23. Blockages in the adoption of State-level legislation also had a negative effect on the fulfilment of conditions set forth in the visa liberalization road map. In April, the European Commission addressed the Bosnia and Herzegovina Parliamentary Assembly, noting a number of outstanding issues and referring to six outstanding Bosnia and Herzegovina laws, as well as the implementation of police reform laws. Five of those laws have been blocked in parliament because of opposition from Republika Srpska parties, including the Laws on Border Control, Weapons, Transportation of Dangerous Materials, International Legal Aid, and Control of Movement of Weapons and Military Equipment.⁵

24. During the reporting period, Bosnia and Herzegovina authorities took steps to establish the new State-level police bodies provided for in the 2008 police reform laws.

25. In February, the Council of Ministers appointed the Directors and Deputy Directors of the Agency for Forensic Examinations and Expertise and the Agency for Police Support and the Deputy Director of the Agency for Education and Advanced Training of Personnel. The Council of Ministers also decided on the seats of the aforementioned agencies. The selection of the Director of the Agency for Education and Advanced Training will have to be repeated.

26. The establishment of the Independent Board and the Public Complaints Board failed late in March, owing to opposition from SNSD and SDS members in the Bosnia and Herzegovina House of Peoples, thus necessitating the repetition of the

⁵ With the exception of the last of these laws, which is still pending in the Bosnia and Herzegovina House of Peoples, these laws all failed in the Parliamentary Assembly.

appointment procedure for the members of those boards. The formation of the Independent Board is necessary for proceeding with the outstanding appointment of the Director and Deputy Directors of the Directorate for the Coordination of Police Bodies.

27. The legal deadline for the appointments to the new State-level police bodies mentioned above was August 2008.

28. In December, the Council of Ministers forwarded amendments to the Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina, and the Law on Police Officials of Bosnia and Herzegovina to the Bosnia and Herzegovina Parliamentary Assembly, and in March forwarded amendments to the Law on the State Investigation and Protection Agency and the Law on Border Police for parliamentary procedure, as required by the police reform laws. The legal deadline for the harmonization of the above-mentioned legislation with the police reform laws was November.

IV. Entrenching the rule of law

29. Further progress has been achieved during the reporting period towards entrenchment of the rule of law, which is the fifth of the five objectives set by the Peace Implementation Council Steering Board for transition from the Office of the High Representative to the European Union Special Representative. The Bosnia and Herzegovina Council of Ministers adopted the Bosnia and Herzegovina National War Crimes Strategy on 29 December and the implementation action plans of the National Justice Sector Reform Strategy were unanimously endorsed at a ministerial conference held in December.

30. Progress was finally made to adopt a war crimes prosecution strategy when the Council of Ministers adopted the Bosnia and Herzegovina National War Crimes Strategy on 29 December. The adoption of the strategy was a benchmark in the rule of law objective for transition from the Office of the High Representative to the European Union Special Representative, and with the adoption this benchmark was met. A strategy on war crimes was long overdue, particularly in view of the large number of domestic cases as well as the impending closure of International Tribunal for the former Yugoslavia. The Strategy sets criteria for the distribution of cases between the Bosnia and Herzegovina and entity judiciaries, reflects work done on cataloguing crime events, recognizes the need for resources and legislative amendments, stresses the importance of regional cooperation in war crimes investigations, and calls upon the authorities to urgently improve that cooperation. More recently, the implementation has experienced some delays. However, the necessary amendments to State legislation were adopted by the Council of Ministers, having now entered the parliamentary procedure, and the Supervisory Board to supervise the implementation of the Strategy has been established.

31. At a ministerial conference in December, action plans for the implementation of the Justice Sector Reform Strategy (2009-2013) were endorsed and a common declaration adopted. Implementation working groups were established in January. A second set of meetings of all working groups, at which the Office of the High Representative participates in the capacity of observer and adviser, is currently ongoing in order to prepare the next Ministerial Conference, when the Strategy will be revised and possibly updated. Regrettably, the implementation of the Strategy is

hampered by the more than limited participation of the Republika Srpska Ministry of Justice and by the weak contribution of the Federation Ministry of Justice. While the Bosnia and Herzegovina Ministry of Justice ensures that all sides are kept informed, the results achieved so far given the present level of cooperation remain low. The next ministerial conference, scheduled for the end of May in Banja Luka, should address these concerns.

32. All was not positive in the realm of the rule of law during the reporting period, which was characterized by attacks by political authorities to undermine the achievements of past reforms in the justice sector. Most notably in this respect the Republika Srpska authorities ignored a request from the State Investigation and Protection Agency to submit documentation concerning governmental building projects in relation to a pre-investigative action in alleged crimes involving the Republika Srpska Prime Minister. The Republika Srpska Prime Minister even publicly suggested the use of armed resistance in case of a forcible action to collect the requested documentation. In February, the attacks and challenges increased upon the submission of the Agency's report to the State Prosecutor's office alleging criminal activities in relation to the above-mentioned events in the Republika Srpska. An internal disciplinary process conducted in April has thus far determined that Agency personnel conducted the investigation in accordance to the relevant procedures.

33. Also of concern was a case submitted by a delegate of SNSD before the Bosnia and Herzegovina Constitutional Court challenging the Law on the Court of Bosnia and Herzegovina, the main purpose of which was to terminate the jurisdiction of the Court of Bosnia and Herzegovina for criminal offences prescribed by the entity criminal codes when such offences endanger the sovereignty of Bosnia and Herzegovina or have serious consequences beyond the territory of one entity. The Office of the High Representative submitted an *amicus curiae* brief to the Bosnia and Herzegovina Constitutional Court, and in March the Court issued a ruling confirming the constitutionality of the provision of the Law on the Court of Bosnia and Herzegovina that had been challenged. Regardless of the ruling, the number of political rhetorical attacks on State justice institutions remained high in the reporting period.

34. In the Federation, the authority of the High Judicial and Prosecutorial Council was challenged by a decision of the Federation President to appoint a judge to the Federation Constitutional Court in violation of the Federation Constitution and State law. The final authority for the appointment of judges to the Constitutional Court belongs to the House of Peoples of the Federation Parliament, and the President's choice for nomination of candidates is restricted by the role of the High Judicial and Prosecutorial Council in selecting and proposing the suitable candidates, as required by the Federation Constitution. The constitutional provision thus establishes balance between the request for independence of judges and their professionalism, and the power of the President to choose between the proposed candidates. The Federation President nominated a person who was excluded as a candidate by the High Judicial and Prosecutorial Council and stayed by her decision even after being prompted by the Council and the Committee of the Parliament about the breach of constitutional procedure. In the ensuing stalemate, the High Representative issued the legal opinion on the relevant constitutional provisions, as the High Representative initially enacted them in 2002. Even after the Constitutional Committee of the Federation House of Peoples had endorsed the legal opinion of the High

Representative, the President insisted on her politically affiliated nominee. Following the failure of vote in the House of Peoples in favour of the President's nominee, the High Judicial and Prosecutorial Council decided to republish the vacancy and reinitiate the procedure.

35. The State prison construction project has continued to experience delays, thereby running the risk that some bilateral donations could be lost. The Bosnia and Herzegovina Ministry of Justice continues to oversee the project, including the ongoing technical review needed by the Council of Europe Development Bank before confirming its final approval for the loan.

V. Cooperation with the International Tribunal

36. According to the International Tribunal for the Former Yugoslavia, Bosnia and Herzegovina authorities have continued to grant access to Government archives and to provide requested documents. Moreover, authorities have also provided adequate responses to requests for assistance as well as facilitating the appearance of witnesses before the Tribunal.

37. The Office of the Prosecutor did however stress the necessity that Bosnia and Herzegovina law enforcement and judicial authorities take necessary measures against those who are engaged in helping the remaining fugitives evade justice or otherwise obstructing the effective implementation of the Tribunal's mandate.

38. Closely linked to cooperation with the Tribunal, the adoption by the Bosnia and Herzegovina Council of Ministers of the Bosnia and Herzegovina National War Crimes Strategy on 29 December is a positive outcome. The adoption of the Strategy was a benchmark in the rule of law objective for transition from the Office of the High Representative to the European Union Special Representative. A strong strategy on war crimes was long overdue, particularly in view of the huge Bosnia and Herzegovina domestic caseload as well as the impending closure of the Tribunal. The Strategy sets criteria for the distribution of cases between the Bosnia and Herzegovina and lower levels, reflects work done on cataloguing crime events, recognizes the need for resources and legislative amendments, stresses the importance of regional cooperation in war crimes investigations, and calls upon the authorities to urgently improve that cooperation.

39. During March, the (previous) High Representative used his executive powers to impose several amendments to Bosnia and Herzegovina and Federation laws, which prevented the early release of sentenced war criminals. The Tribunal had asked him to act upon this issue, and extended its gratitude for his timely action.

40. The arrest of Ratko Mladic and Goran Hadzic, the two remaining fugitive indictees, remains the Tribunal's priority. The Office of the High Representative will continue to support the activities of and cooperate with the Tribunal, NATO, EUFOR, the European Union, the Republika Srpska police, the Bosnia and Herzegovina Intelligence and Security Agency and other agencies involved in establishing their whereabouts and their arrest.

41. Two combined international-Bosnia and Herzegovina operations seeking information were conducted during the first quarter of 2009, both of them against members of the Mladic support network. One operation was against close relatives of Mladic located in the Republika Srpska municipality of eastern Sarajevo, and the

other against a former bodyguard and retired military associate who recently relocated to Banja Luka and is affiliated with a private security company.

42. The fact that convicted war criminal Radovan Stankovic remains at large, most likely in Serbia, is a continuing embarrassment to the region. Relevant Republika Srpska authorities have failed to hold a single person accountable for his escape, and have taken no action to encourage Serbian authorities to apprehend him, despite his having mailed threats from Serbia to Bosnia and Herzegovina prosecutors and judges. Stankovic escaped from the Republika Srpska prison in Foca in May 2007. Stankovic was the first case transferred by the Tribunal to the Court of Bosnia and Herzegovina, which convicted him of running a rape camp, among other crimes.

VI. Reforming the economy

43. Economic trends in the reporting period forecast serious challenges in 2009. While real GDP growth was 5.5 per cent in 2008,⁶ the impact of the global economic crisis on Bosnia and Herzegovina is likely to cause a sharp decrease in 2009. Driven by the rise in commodity prices and utilities, headline inflation reached 7.5 per cent⁷ at the end of 2008. This was slightly lower than in the summer when it was at its highest rate in the past 10 years. The trade deficit in 2008 amounted to KM 9.574 billion; exports increased by 13.1 per cent on an annual basis, thereby totalling KM 6.711 billion, and imports increased by 17.2 per cent and amounted to KM 16.286 billion.⁷ Mostly as a result of salary increases in the public sector, the average net wage in Bosnia and Herzegovina increased and amounted to around KM 800 at the end of 2008.⁷ The registered unemployment rate at the end of 2008 was 40.8 per cent⁷ and appeared to be rising. New employment has been in decline since November. A decline is visible in foreign direct investments too, which dropped from 11 per cent of GDP in 2007 to less than 6 per cent of GDP in 2008 and continues to have a downward tendency.⁸

44. As to the economic reform agenda, the reporting period has been characterized by a number of developments and challenges. The Governing Board of the Indirect Taxation Authority completed a few tasks from its portfolio, such as the preparation of the draft Law on Excise and the adoption of bylaws needed for the restructuring of the secretariat of the Authority's Governing Board and the set-up of a Final Consumption Unit. The allocation of indirect tax revenue between the entities remains a subject of dispute, however. Consequently, the Governing Board has been unable to agree on new revenue allocation coefficients since June 2008. This has been used by the Republika Srpska as a justification to question the overall indirect tax reform and the single account concept. The revenue allocation dispute has also undermined efforts to reappoint or replace the current Director of the Authority, whose mandate expired on 8 December.

45. Since its inauguration on 11 September 2008, the Bosnia and Herzegovina Fiscal Council has been meeting relatively regularly. While its decision of 6 November 2008 to set the upper limit for the budgets of the State, the entities and

⁶ Central Bank of Bosnia and Herzegovina.

⁷ Statistics Agency of Bosnia and Herzegovina.

⁸ Central Bank of Bosnia and Herzegovina.

the Brcko District⁹ contributed to the relatively early adoption of the 2009 budgets at all levels,¹⁰ the Fiscal Council has so far contributed little to policy coordination among its members. Regardless of the challenges facing the country as a result of the global economic crisis the members of the Bosnia and Herzegovina Fiscal Council plan, adopt and implement measures independently of each other. Of particular concern is that this mechanism is being used by both entities to reach agreements that benefit the entities only. On 6 March, the Fiscal Council accepted a Protocol on Temporary Allocation of the Succession Funds, foreseeing that 65 per cent of the total of KM 180 million of the succession funds be given to the Federation and 35 per cent to the Republika Srpska. Although this allocation is considered to be of temporary nature and thus subject to modifications and consequent rebalancing once a new law on management of funds from succession is enacted at the State level, it is disturbing that the interests of the State and the Brcko District were completely neglected.

46. Similar decisions are likely to continue until the financial crisis in the Federation, now also accompanied and accelerated by the effects of the global economic crisis, is properly addressed. The Federation Government has launched some initiatives to cover last year's deficit of KM 260 million and to financially cover all obligations in 2009, but it has so far lacked the capacity to take difficult decisions. The parties are already positioning themselves for the general elections of 2010 and do not seem to understand the full urgency of the situation. If action is not taken rapidly, there is a risk of eventual financial collapse and attendant social unrest and political instability. These risks are further exacerbated by the underperformance of revenues as a result of the global crisis, continued lack of agreement on revenue allocation coefficients, continued challenges to the State institutions by the Republika Srpska, expired mandates and delayed appointments.

47. In the business sphere, the reporting period was characterized by the continued opposition of the Republika Srpska to any reform requiring a transfer of competence, including the European partnership requirements such as the adoption of a State-level law on obligations and the set-up of a State-level banking supervision system.

48. Problems also continued in the energy sector, primarily with regard to the Bosnia and Herzegovina Electricity Transmission Company (Transco). Despite the entity Prime Ministers' Agreement on Energy Policy Principles of 6 November 2008 and the Transco Shareholders Assembly Agreement of 3 December 2008, whereby the parties agreed to urgent measures and activities required for the smooth operation of Transco, there were no improvements during the reporting period. Transco still does not function in full capacity and in accordance with the legislation in force due to the continuing boycott by the Republika Srpska of Management

⁹ The 6 November 2008 decision of the Fiscal Council allowed a 12 per cent increase of the State and a 6 per cent increase of the entity and Brcko District 2009 budgets compared to their 2008 budgets.

¹⁰ The State budget was adopted on 29 January 2009 in the amount of KM 1.41 billion, which is an increase of 19 per cent compared to the 2008 adopted budget; the Federation budget was adopted on 29/30 December 2008 in the amount of KM 1.6 billion, which is a decrease by KM 233 million or 13 per cent compared to the 2008 rebalanced budget; and the Republika Srpska budget was adopted on 22/23 December 2008 in the amount of KM 1.67 billion, which is a 6 per cent increase compared to the 2008 rebalanced budget or an 11 per cent increase compared to the 2008 adopted budget.

Board meetings and the General Manager's continued obstruction of the Board's earlier decisions. This also affects the reappointment or replacement of the key Executive Directors of Transco, whose mandates expired on 1 March. The Prime Minister and the Energy Minister of the Republika Srpska opposed all attempts to change this situation and also rejected the international community's offer of assistance in overcoming the problems and improving the company's performance. The situation rapidly becomes detrimental for the only electricity transmission company in Bosnia and Herzegovina and may lead to its dissolution. This would represent a rollback on the reform that was one of the preconditions for negotiating the signing of a Stabilization and Association Agreement, which is required under the Athens Energy Community Treaty and was implemented with significant international financial support.

VII. Public administration reform

49. During this reporting period, the High Representative was forced to express his concerns about amendments to the State law on the civil service on several occasions because of their potential to reverse longstanding efforts to put in place a merit-based, politically independent civil service, as well as to undermine the State-level Civil Service Agency. Although adopted by the Council of Ministers, a further intervention in February by the Principal Deputy High Representative/Acting High Representative had the desired effect and the parliamentary committee discussing the amendments made the changes necessary to safeguard the core principles underlying the existing civil service system. The amendments were adopted by the Bosnia and Herzegovina Parliamentary Assembly at the end of April in a satisfactory form.

VIII. Defence reform

50. During the reporting period Bosnia and Herzegovina instituted capacity-building of its defence planning process, although, within the defence budget, allocation of funds to personnel costs remained high, at the expense of capital costs. There was no evidence of ethnic tension hampering reforms or operational capability within the armed forces of Bosnia and Herzegovina.

51. NATO conducted assessments to determine defence reform progress in Bosnia and Herzegovina within the Individual Partnership Action Plan and the Planning and Review Process, two activities within the Partnership for Peace Programme. Concerning the Individual Partnership Action Plan, NATO held discussions with officials from Bosnia and Herzegovina ministries in February, revealing a reasonable degree of progress on many issues. This was especially the case at the technical level where ministries and their staff were empowered to engage on particular issues. However, there appeared to be some delays in the implementation of issues that were either sensitive or politicized by Bosnia and Herzegovina institutions or entities. An official report on progress was discussed by the NATO North Atlantic Council, together with the Bosnia and Herzegovina Minister for Foreign Affairs and Minister of Defence on 11 March.

52. With regard to the Planning and Review Process, NATO held discussions with the Bosnia and Herzegovina Ministry of Defence and the armed forces of Bosnia

and Herzegovina during February. Discussions showed that some progress had been made within the implementation of the Planning and Review Process Partnership goals. However, the failure to resolve the issues of movable and immovable property (the second of the five objectives and two conditions for the transition from the Office of the High Representative to the European Union Special Representative) and the lack of financial resources remained significant obstacles to progress. The NATO Political-Military Steering Committee, together with a team from Bosnia and Herzegovina, discussed the final draft of the Planning and Review Process assessment on 2 March.

IX. Intelligence reform

53. Amid ongoing political tension in Bosnia and Herzegovina, the Intelligence and Security Agency continued its ongoing efforts to consolidate its work and functioning. Training in operational techniques and methods were stepped up with support from the Agency's international partners. Likewise, work on the internal standardization and regulation of the lawful intercept system progressed.

54. The Bosnia and Herzegovina parliamentary committee that oversees the Intelligence and Security Agency continued its practice of inspections of regional centres. On 10 February, amendments to the Law on the Intelligence and Security Agency and amendments to the Law on Protection of Secret Data came into force. The former enhanced planning and reporting obligations between the Agency and the State's executive and parliamentary bodies. The amendments to the Law on Protection of Secret Data broadened the scope of data protection in Bosnia and Herzegovina with regulations on industrial security, which are also in line with NATO standards.

X. European Union military mission in Bosnia and Herzegovina

55. After its United Nations mandate was extended on 20 November 2008 for another 12 months, the European Union continued to provide a military presence in Bosnia and Herzegovina with a force of approximately 2,200 troops. EUFOR was based in Sarajevo with a headquarters, a multinational battalion and the integrated police unit together with other assets. EUFOR continued to have liaison and observation teams based in the local communities throughout the country.

56. In a politically fragile and brittle environment, EUFOR continued to play an important role in contributing to the safe and secure environment, which was not threatened during the reporting period. Local law enforcement agencies proved able to deal with all public unrest issues during the period.

57. EUFOR continued to monitor and advise on Joint Military Affairs tasks that have been handed over to the Bosnia and Herzegovina authorities. This will remain a requirement for some time. The handover of the only Joint Military Affairs task that remained with EUFOR — civilian movement control — was stuck in the process of parliamentary adoption: the requisite legislation was again rejected in April owing to a lack of support from delegates elected from the Republika Srpska.

58. EUFOR, within its means and capabilities, continued to provide essential support to the International Tribunal, especially through its operations against support networks of persons indicted for war crimes.

XI. Return of refugees and displaced persons

59. The Council of Ministers of Bosnia and Herzegovina adopted the strategy for implementation of annex 7 on 29 January. The document focuses on the return of displaced persons and refugees to their homes of origin, primarily through reconstruction of dwellings. It also addresses the integration of displaced persons who cannot return as well as the issue of compensation for property that cannot be restored to the owners. The strategy further discusses a range of topics related to the sustainability of return, and proposes measures to address obstacles in those areas. However, the parliament has failed to adopt the Strategy thus far. The Serb representatives insist that the strategy be amended to provide greater emphasis on assisting people who wish to remain in the current place of residence. Yet the Bosniak representatives wish to ensure that State financing for annex 7 will be reserved to support returns almost exclusively. The draft strategy does provide for access to all rights stipulated in annex 7, and can be further elaborated on once the document has been adopted. We have repeatedly called upon parliament to adopt the strategy. The current political stalemate over this issue results only in an unnecessary delay in helping the more than 100,000 displaced people in Bosnia and Herzegovina, thousands of them still in collective centres, to find a durable solution.

XII. Mostar

60. The Mostar City Council has so far failed to elect a new mayor in accordance with the requirements of the statute of the City of Mostar, because of a power struggle between the Bosniak-dominated SDA and the Croat-dominated HDZ, each of whom covet the mayor's position, with the numerically significant Narodna Stranka — Radom za Boljitak (People's Party — Work for Prosperity) in the middle. There have been no serious political negotiations despite repeated efforts by the Office of the High Representative urging the parties to do so. As a result, numerous rounds of mayoral voting have repeatedly yielded the same negative results.

61. The Croat prefix parties, particularly HDZ, have used the situation to attack the Mostar statute, which calls into question their commitment to the unification process.

62. The failure to elect a mayor means that the city risks financial collapse, since there is no annual budget, and the city's temporary financing decision expired on 31 March. It is the mayor's responsibility to propose the draft budget, but there is no new mayor to do so. While the former mayor still occupies the position until a new mayor is elected, and could propose a budget, the City Council would reject any such proposal under the current circumstances.

63. The impasse not only delays the key goal of adoption of the Mostar statute by the City Council, but also raises questions about the sustainability of a unified Mostar in the absence of the persistent engagement of the international community.

64. Meanwhile, the government of Herzegovina-Neretva Canton, based in Mostar, has been hit by the global economic crisis. A shortfall in revenues has forced the government to propose a 15 per cent salary cut for all budgetary beneficiaries, which include police, medical workers, teachers and civil servants. In response, the trade unions have threatened general strikes, which could bring normal life in the canton to a standstill.

XIII. Brcko District

65. Brcko District has seen two welcome albeit long overdue developments during the reporting period: first the adoption by the Bosnia and Herzegovina Parliamentary Assembly, by an overwhelming majority, of an amendment to the Bosnia and Herzegovina Constitution giving the District access to the Bosnia and Herzegovina Constitutional Court, and secondly the formation of a new concentration government, representing all political parties and constituent peoples. As a result of these positive developments the Brcko District is nearing the point where closure of the supervisory regime is possible.

66. Intensive talks and consultations were undertaken after the Prud leaders meeting and the November meeting of the Peace Implementation Council Steering Board to secure an agreement on a constitutional amendment giving the Brcko District access to the Bosnia and Herzegovina Constitutional Court; the Supervisor, the Office of the High Representative and the United States played a key role in bringing the parties together. On 25 February, the Republika Srpska National Assembly adopted a conclusion on supporting the constitutional amendments in a significant departure from its decision of March 1999, by which it rejected the Final Award. The Council of Ministers adopted the amendment early in February and the Bosnia and Herzegovina Parliamentary Assembly followed suit on 26 March. The amendment came into effect on 5 April.

67. The Brcko District Supervisor had made clear before the elections of October 2008 that it would be essential for all members of the newly elected Government to expressly commit themselves to the Dayton Peace Agreement, to continue to recognize the Awards of the Arbitral Tribunal and the status of the District as a democratic, multi-ethnic unit of self-governance under the sovereignty of the State, and to clearly commit themselves to continue to protect the status of the District after the supervisory regime ends. The political constellation after the election results was such that no party came close to securing a majority and so a "concentration government", including all parties in the Assembly, emerged as the only realistic option. It was only on 11 February that the Assembly elected the Speaker (Bosniak), the Deputy Speaker (Croat) and the Serb Mayor. Members of the Government were sworn in on 26 March.

XIV. Bosnia and Herzegovina and the region

68. Despite the occasional spat and niggling border issues, regional relations have been relatively quiet during the reporting period, although the Serbian Foreign Minister's comments at the end of April suggesting Bosnia and Herzegovina was a "protectorate" elicited a strongly worded response from a member of the Bosnia and Herzegovina Presidency, Haris Silajdzic. Federation-based politicians raised their

voice against arrest warrants supposedly issued in March by a court in Belgrade against 13 (or more) past and present Bosnia and Herzegovina officials allegedly implicated in an attack on a Yugoslav People's Army column withdrawing from Sarajevo in May 1992. At the time of writing, however, no such warrants had actually appeared. Given both the former rule of the Tribunal that war crimes cases should be tried in the successor republic in which the putative offence was committed and the fact that a former city official in Tuzla is currently being tried in Belgrade in an analogous case, Bosnia and Herzegovina judges and prosecutors are very sensitive about losing what they regard as their rightful jurisdiction.

69. There was one potentially significant development in a long-running but low-level dispute with Croatia over that country's construction of a bridge from the Dalmatian mainland to the Peljesac peninsula. The Bosnia and Herzegovina view is that such a bridge might block access to the open sea for Bosnia and Herzegovina's potential port of Neum, would allow road traffic to bypass the country's short stretch of coast, and possibly jeopardize its claim on two tiny islands in the adjoining bay. The Bosnia and Herzegovina Presidency wrote officially to the Government of Croatia in mid-April proposing talks on the issue, failing which Bosnia and Herzegovina would seek redress in international courts.

70. The upper house of the Bosnia and Herzegovina Parliamentary Assembly voted late in April for a bill that would reintroduce Customs tariffs on agricultural produce from Croatia and Serbia contrary to obligations under the Central European Free Trade Agreement. On the other hand, some positive excitement was generated during the period by talks with Montenegro on a joint project to link the two countries' railway networks. This would involve the construction of a 150-km line from Capijina to Niksic.

XV. European Union Police Mission

71. In line with its "strategic objectives for 2009", the European Union Police Mission continued to concentrate its efforts on supporting the fight against organized crime and assisted in coordinating the policing aspects of efforts to combat major and organized crime. Furthermore, the Mission, in coordination with the Office of the High Representative and the European Union Special Representative, continued to monitor and assess the implementation of the police reform legislation adopted on 16 April 2008. The Mission and the Office of the High Representative/European Union Special Representative worked on efforts to harmonize entity, cantonal and Breko District police legislation and developed proposals on reforming State-level legislation covering the State Investigation and Protection Agency and the Border Police.

XVI. Non-certification of police officers

72. During the reporting period, the Republika Srpska has remained the only jurisdiction in Bosnia and Herzegovina that has yet to implement the provisions of the letter of April 2007 from the President of the Security Council on persons denied certification by the International Police Task Force. In December, associations of persons denied certification by the International Police Task Force staged a peaceful

protest in front of the Office of the High Representative/European Union Special Representative building in Sarajevo.

XVII. Media development

73. A deterioration of media freedoms in Bosnia and Herzegovina has been registered during the reporting period. Since January, the Free Media Helpline of the Bosnia and Herzegovina Union of Journalists has registered 16 verbal assaults and direct physical attacks, death threats and other violations of journalists' rights. This represents an increase of 20 per cent compared to 2008. It also became evident during the period that the little cooperation that existed between local media organizations responsible for media freedoms has diminished. On 29 April the RTRS, the Republika Srpska public broadcaster and the Republika Srpska daily newspaper *Glas Srpski* walked out of the association BH Journalists, announcing the establishment of a separate Republika Srpska only association of journalists.

74. Almost 12 months after the (long delayed) adoption of the Federation law on the public broadcasting system, the Federation parliament has still not appointed the Board of Governors of Federation Radiotelevision. The main reason for this is a lack of political consensus and an attempt by the parliament to take an excessively large role in their appointment. Without the Federation Board, the registration of the Bosnia and Herzegovina Public Broadcasting Corporation, responsible for streamlining and modernizing the activities of all three public broadcasters in the system, continues to be on hold.

75. The Council of Ministers was supposed to shortlist candidates for the new Council of the Communications Regulatory Agency and present the list to the Bosnia and Herzegovina parliament for it to make the necessary appointments. Despite the fact that the mandate of the current Council expired on 25 April, and despite having received the candidate list from the Agency on time, the Council of Ministers has yet to put this item on its agenda. Together with the failure of the Council of Ministers to appoint a new General Director of the Communications Regulatory Agency, unresolved since October 2007, the Council of Ministers is seriously undermining the independence, overall performance and ability to function of the Agency.

XVIII. European Union Special Representative

76. In close cooperation and coordination with the European Union, the European Union Special Representative continued his efforts to facilitate the efforts of Bosnia and Herzegovina to meet requirements for European Union membership. Beyond seeking to facilitate the adoption of individual requirements set forth in the European Partnership and the Stabilization and Association Agreement, the European Union Special Representative has also engaged in efforts to increase public and sectoral support within Bosnia and Herzegovina for European Union accession. With this in mind, the European Union Special Representative continued his outreach programme after the municipal elections of October 2008, involving parliamentarians, media, civil society and non-governmental organizations, social partners and youth representatives.

77. The "Parliament for Europe" project of the European Union Special Representative has brought together European Union representatives with Members of Parliament from the State, entity and Brcko District assemblies with the objective of informing key Bosnia and Herzegovina actors about European Union requirements and standards, and to encourage them to work towards meeting them. Each of the five sessions held thus far has focused on a different topic, such as the role of parliament in European Union accession, public administration reform, human rights and the protection of minorities, the fight against corruption, and the European Union internal market.

78. The European Union Special Representative is cooperating closely with public broadcasters in Bosnia and Herzegovina to increase and improve coverage of European Union issues in the media. Through this initiative the public broadcasters have increased news reports on the impact of the Stabilization and Association process and eventual European Union membership on citizens of Bosnia and Herzegovina. The reports are broadcast in the prime-time news bulletins and talk shows. The core group of journalists engaged on this project increase their knowledge and understanding of European Union issues, turning them into future European Union correspondents.

79. The European Union Special Representative publishes a weekly electronic newsletter summarizing news from the European Union and on the relations of Bosnia and Herzegovina with the European Union, which is distributed every Saturday to the media, government bodies, civil society actors and individual subscribers. The newsletter fills an important gap in the media landscape in Bosnia and Herzegovina. The European Union Special Representative's website www.reci.ba ("reci" means "say it") has also developed into an important communication tool. Through the website, the European Union Special Representative has personally engaged in a dialogue with citizens, recording 165 answers to questions from citizens. Some of the replies have been taken up by the media as news items. In its first year, the site has received some 65,000 visits, with more than 7,000 comments submitted by citizens.

80. The European Union Special Representative continued to encourage a genuine public dialogue on the European Union by helping non-governmental organizations nurture European Union sentiment and activities, including monitoring implementation of the Stabilization and Association Agreement and the European Partnership priorities. The Special Representative has also been the patron of two regional conferences, one for non-governmental organizations and young people, respectively, and taken part in a conference on the role of local governments and communities in the European Union integration process. In addition, the Special Representative has supported Mostar's two student unions in organizing an unprecedented joint debate on Bosnia and Herzegovina's European Union perspective, with the participation of students from both universities in Mostar.

XIX. Future of the Office of the High Representative

81. The Peace Implementation Council Steering Board met twice during the reporting period, first on 20 November 2008 and then again on 26 March 2009 to review the situation in Bosnia and Herzegovina. It recognized the progress that had been made by the authorities in Bosnia and Herzegovina to deliver the objectives

and conditions for the transition from the Office of the High Representative to the European Union Special Representative. However, it also made clear that it had serious concerns about the prevailing political situation in the country, including the challenges to the country's sovereignty, territorial integrity and constitutional order, as well as to its State-level institutions.

XX. Reporting schedule

82. In keeping with the proposals of my predecessor to submit regular reports for onward transmission to the Security Council, as required by Security Council resolution 1031 (1995), I herewith present my first regular report. Should the Secretary-General or any Security Council member require information at any other time, I should be pleased to provide an additional written update.